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SUPREME COURT OF THE UNITED STATES.

No. ~~285~~. 124. 61.

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL, JAMES LINDSEY, HORACE BRADLEY, ELEANOR M. BRADLEY, JOHN B. MATTHEWS, MARGARET D. MATTHEWS, and JOSEPH T. LINDSEY, App'ts,

vs.

DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, and DAVID BARNES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GIDEON, Printer.

Submitted Dec 11/62

SUPREME COURT OF THE UNITED STATES.

No. 205.

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL, JAMES LINDSEY, HORACE BRADLEY, ELEANOR M. BRADLEY, JOHN B. MATTHEWS, MARGARET D. MATTHEWS, and JOSEPH T. LINDSEY, App'ts,

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UNITED STATES OF AMERICA,
Northern District of Illinois.

Pleas in the Circuit Court of the United States of America, for the Northern District of Illinois. In Chancery, sitting at the city of Chicago, in said Northern District of Illinois, before the Hon. Thomas Drummond, District Judge; and in the absence, pro tempore, of the Hon. John McLean, one of the Justices of the Supreme Court of the United States of America, sole Judge of said Circuit Court, on Thursday, the first day of December, as yet of the October adjourned Term of said Court, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-fourth year. WM. H. BRADLEY, Clerk.

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL, JAMES LINDSEY, HORACE BRADLEY, ELEANOR M. BRADLEY, JOHN B. MATTHEWS, MARGARET D. MATTHEWS, and JOSEPH T. LINDSEY,
vs.
DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, and DAVID BARNES.

Northern District of Illinois, *ss.*

Be it remembered, that heretofore, to wit, on the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty-four, came the said Augustine A. Lindsey, Adam Noel and Susan his wife, James Lindsey, Horace Bradley and Eleanor M. his wife, John B. Matthews and Margaret D. his wife, and Joseph T. Lindsey, complainants in this suit, by Messrs. Whittaker and Grant, their solicitors, and filed in the office of the Clerk of the Circuit Court of the United States, for the District of Illinois, at Chicago, their bill of complaint against the said David Hawes, Jacob Norris, George M. Babcock, and David Barnes, defendants. Also, at the same time, filed their bond for costs, in said foregoing entitled cause, which said bond for costs is in the words and figures following, to wit.

United States of America, in the Circuit Court of the United States, at Chicago, District of Illinois:

In the case of AUGUSTINE A. LINDSEY and Others,
The heirs of THOMAS LINDSEY,
vs.
DAVID HAWES and Others.

We acknowledge ourselves indebted to the defendants in the sum of one thousand dollars, to be discharged on payment of all such

costs and charges as may be awarded and adjudged against the plaintiffs on their failure to prosecute this suit with effect.

Witness our hands and seals this the 25th day of December 1854.

TIMOTHY WOOD. [SEAL.]

Endorsed. Filed Dec. 25th 1854. WM. POPE, Clerk.
By J. T. MOULTON, D'y Cl'k.

Whereupon a writ of subpœna was issued against the said defendants as prayed for in the bill of complaint, directed to the Marshal of the District of Illinois to execute. Which said writ of subpœna is in the words and figures following, to wit:—

Circuit Court of the United States of America, District of Illinois.

The United states of America, to the Marshal of the District of Illinois, greeting:—

We command you that you summon David Hawes, Jacob Norris, George M. Babcock and David Barnes, if they are to be found in your district, to be and appear before our judges of our Circuit Court of the United States for the District of Illinois, at the next term thereof, to be holden at Chicago in the District aforesaid on the third Tuesday of April next, to answer unto Augustine A. Lindsey, Adam Noel and Susan his wife, James Lindsey, Horace Bradley and Eleanor M. Bradley his wife, John B. Matthews and Margaret D. Matthews his wife, and Joseph J. Lindsey, complainants, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 25th day of December, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the 79th.

[L. S.] WM. POPE, Clerk.

And afterwards, to wit, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and fifty-five, came the said complainants by their said solicitors and filed in the office of the Clerk of the Circuit Court of the United States for the Northern District of Illinois, at Chicago, their amended bill of complaint in said entitled cause, which, by consent of parties, is substituted for the original bill of complaint filed herein. Said amended bill of complaint is in the words and figures following, to wit:—

UNITED STATES OF AMERICA.

Circuit Court, Seventh Circuit,
for the Northern District of Illinois. In Chancery.

To the Hon. John McLean, Presiding Judge of said Court, in Chancery sitting—

Your petitioners, Augustine A. Lindsey, a son of Thomas Lindsey, deceased, late of Rock Island County, State of Illinois, Susan Noel, a daughter, and Adam Noel her husband, James Lindsey, a son,

Eleanor M. Bradley, a daughter, and Horace Bradley her husband, Margaret D. Matthews, a daughter, and John B. Matthews her husband, and Joseph T. Lindsey, a son, heirs at law of Thomas Lindsey, deceased, and of his deceased son Andrew, and daughter Sarah Ann, show unto your Honor—

That Thomas Lindsey, their ancestor, in the month of April, in the year of our Lord eighteen hundred and thirty-nine, applied for and made due proof under the act of Congress passed twenty-second day June, A. D. 1838, to the Register and Receiver of the Land Office at Galena, Illinois, of a pre-emption right and settlement on the northeast fractional quarter of section No. thirty-six (36), in township No. eighteen (18) north, range two (2) west of the fourth (4th) principal meridian, situated in the county of Rock Island, and State of Illinois, and within the jurisdiction of this honorable court.

Said Thomas Lindsey then was and had been an occupant of and cultivator upon said fractional quarter since the year eighteen hundred and thirty-five; said proof was satisfactory to the said register and receiver, who sold the same to the said Thomas Lindsey; and on the third day of June, eighteen hundred and thirty-nine, the said Thomas Lindsey paid therefor, and received from Samuel Hackelton, the Register of the Land Office at Galena, a certificate of the entry and purchase thereof, which is in substance as follows:—

"No. 8460. Land Office, Galena, Ill., June 3d, 1839.

It is hereby certified that, in pursuance of law, Thomas Lindsey, of Rock Island County, State of Illinois, on this day purchased of the register of this office the lot or southwest part of the northeast fractional quarter of section No. thirty-six (36), in township No. eighteen (18), of range No. two (2) west, containing five acres and $\frac{76}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre, amounting to (6 $46\frac{1}{4}$) six dollars and forty-six and $\frac{1}{4}$ cents, for which the said Thomas Lindsey has made payment in full as required by law.

Now therefore be it known that, on the presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Lindsey shall be entitled to receive a patent for the lot above described.

(Signed) SAMUEL HACKELTON,
"Pre-emption, 1838. Register."

As by reference to an attested copy thereof, marked Exhibit A, will appear, which said certificate was, as is the custom of the land office, retained by the said Hackelton and sent to the Commissioner of the General Land Office at Washington; and at the same time and place, and as part of the same allowance of said pre-emption, John Dement, then Receiver of said Land Office at Galena, gave to the said Thomas Lindsey a duplicate receipt, a copy of which is as follows:—

Pre-emption. Act, 1838. Duplicate.

No. 8460. Receiver's Office, Galena, Illinois, 3d June, 1831.

Received from Thomas Lindsey, of Rock Island County, Illinois, the sum of six dollars and 46¼, being in full payment for the south part of the northeast fractional quarter of section No. thirty-six, in township No. eighteen north of the base line, of range No. two west of the 4th principal meridian, containing five acres and $\frac{17}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

$6.46\frac{1}{4}$. JOHN DEMENT, Receiver.

Which original duplicate given to Thomas Lindsey is now in the possession of your petitioners, and which when produced they pray to make part of this bill. The other duplicate is like the one delivered to said Thomas Lindsey, except that in it the word "west" is between the words "south" and "part," and the word "and" is between "five" and "acres." Both duplicates were intended to describe the same tract of land, to wit: the southwest part of the northeast fractional quarter of section thirty-six (36), in township eighteen (18) north, range two (2) west of the 4th principal meridian.

Your petitioners further show that the said Thomas Lindsey died on the fourteenth (14th) day of September, A. D. 1839, leaving your petitioners, Augustine A., Susan James, Eleanor M., Margaret D., Joseph T., Andrew and Sarah Ann Lindsey, his only children and heirs at law.

Your petitioners further show that Adam Noel intermarried with your petitioner Susan; Horace Bradley with your petitioner Eleanor M., and John B. Matthews intermarried with your petitioner Margaret D.; that said Andrew, a son, and said Sarah Ann, a daughter of Thomas Lindsey, died without issue shortly after the death of their said father, leaving Augustine A. Lindsey, Susan Noel, James Lindsey, Eleanor M. Bradley, Margaret D. Matthews and Joseph T. Lindsey (their survivors), and their mother Sarah Ann Lindsey, their only legal heirs; that their mother, Sarah Ann Lindsey, has released all her interest in the said tract of land to the said Augustine A. Lindsey, Susan Noel, James Lindsey, Eleanor M. Bradley, Margaret D. Matthews and Joseph T. Lindsey; that the said plaintiffs are all of them residents and citizens of the State of Iowa.

Your petitioners further show that at the time of the death of the said Thomas Lindsey, deceased, your petitioners, the Lindseys, were all minors under twenty-one years of age, except Susan. The youngest, Augustine A., was only eight years of age.

Your petitioners further show that after the death of their said father, their mother held possession of and received the rents of said southwest part of said fractional quarter-section for several years.

And your petitioners further show that long after they left the State of Illinois, and long after said land was proclaimed for sale,

which was done on the fourth day of June, 1839, and pre-emption claimants notified to prove up their pre-emptions before the said day of sale, and long after a patent should by the regular practice of the Land Office Department have been issued to Thomas Lindsey, one Silas Reed, on the 17th and 19th days of March, 1844, addressed a letter not sworn to, to Commissioner Whitcombe of the General Land Office, wherein the said Reed set forth that the field notes and surveys of the meanders of the Mississippi River, on the south part of the northeast fractional quarter of section thirty-six (36) aforesaid, were not correct; that the township plat represented the said south part as divided into two small fractions by the Mississippi River, and alleging that there was more land than was surveyed, and that Thomas Lindsey's house, meaning said deceased's house, was on *unsurveyed* or *lost* land.

Upon receiving said letter from said Reed said Whitcomb (Commissioner of the General Land Office) by letter of March 31st, 1844, addressed to William Milburn, Surveyor General, at St. Louis, ordered a resurvey of said land on the ground of the alleged mistake as set forth in said letters of said Reed.

Your petitioners show that on the 29th day of March, A. D. 1844, Thomas H. Blake, who seems to have been acting as commissioner with Whitcomb, also addressed a letter to the Hon'l J. P. Hoge, then of the House of Representatives of the U. S., informing him that Thomas Lindsey's entry so made as aforesaid was suspended on the ground that Thomas Lindsey claimed his pre-emption on the southwest part of said fractional quarter section thirty-six (36), whereas there was no division in said fraction by *Rock River*, and alleging an error in the original survey thereof.

And on the 2d day of April, A. D. 1844, Thomas H. Blake addressed a letter to Silas Reed, then surveyor general, and the same man who addressed the letters of the 17th and 19th of March, 1844, to the commissioner, calling his attention to the letter of the 31st of March, 1844, and directing him to make the necessary investigations and report the facts.

And on the 1st day of June, A. D. 1844, said Blake ordered said Reed to appoint a deputy to resurvey the said fractional quarter, and on the 21st day of September, 1844, said Reed informed him by letter that he had appointed George B. Sargent to perform that duty for the whole of the fractional section thirty-six (36), in township eighteen (18) north, range two (2) west of the fourth (4th) principal meridian.

And on the 20th of June, 1845, F. R. Conway, who was then surveyor general of Illinois and Missouri, addressed a letter to Hon'l Jas. Shields inclosing a plat of the north fractional half (south of the Mississippi River) of fractional section thirty-six (36), in township eighteen (18) north, range two (2) west of the fourth, 4th, principal meridian, informing him that a similar plat had been sent to the land office at Dixon, Illinois.

And on the 9th of August, 1845, more than six years after the said Thomas Lindsey had obtained his pre-emption as aforesaid, and nearly six years after his death, and more than six years after the President's proclamation of said land for sale, the Hon'l Jas. Shields, then Commissioner of the General Land Office, without any affidavit being filed, and without giving any notice to the heirs of Thomas Lindsey, and without any proper case being made or appeal from the decision of said officers of the Galena Land Office, addressed a letter to the register and receiver at Dixon, to which place the land office had been removed from Galena, in which he says among other things, "In consequence of a reported error in the survey of the meanders of the Mississippi River bounding the northeast fractional quarter on the north, which affected the shape and contents of said northeast fractional quarter as well as the southeast fractional quarter north of the old Indian boundary line, the following entries made at your office were suspended to await the return of the plat of the resurvey directed by this office, viz:—

Entry 3709, E. $\frac{1}{2}$ S. E., 36.18 N., R. 2 W., as containing $56\frac{58}{100}$ acres.

Entry 3700, W. $\frac{1}{2}$ S. E., 36.18 N., R. 2 W., as containing $54\frac{27}{100}$ acres.

Entry 8460, S. W. pt. N. E. fr. qr. R. 2 W., as containing $5\frac{17}{100}$ acres.

Entry 8890, S. E. pt. N. E. fr. qr. R. 2 W., as containing $1\frac{87}{100}$ acres.

By the plat of said resurvey recently received from the surveyor general in reference to said N. E. fractional quarter, it appears that the river, instead of entering the S. E. qr. as shown on the old plat, occupies a place some distance north of its position on that map, making the contents of the S. W. pt. N. E. fr. qr. $13\frac{23}{100}$ instead of $5\frac{17}{100}$ acres, and the S. E. pt. N. E. fr. qr. $6\frac{9}{100}$ instead of $1\frac{87}{100}$ acres, and adding also to the contents of the fractional parts of the S. E. fr. qr. north of the old Indian boundary line."

Entry 8460 in the name of Thomas Lindsey is founded on the pre-emption law of 22d June, 1838, the proof averring a residence in the S. W. fr. qr. the tract entered. The plat of resurvey shows that the house and stable of Mr. Lindsey were not on said tract but on the east part of the S. E. fr'l qr., which was not public land on the 22d of June, 1838, having been sold per certif. 3709, in March, 1836. Mr. Lindsey therefore has no right of pre-emption, and certificate 8460 has been cancelled.

From a letter received at this office from J. E. Brackett, Esq., it would appear that Mr. L. is deceased, and that he is acting as attorney for said heirs.

Be pleased to give him notice of this action on the claim of Mr. L., and that upon proper application through you steps will be taken to have the money refunded. In reference to the claim of David Hawes to this tract, by reason of his settlement on the same in

Oct. 1844, be pleased to give him notice that you are ready to receive proof of his right and to adjudicate his claim, due notice being also given to the representatives of Mr. Lindsey."

"Entry 8890 in the name of Isaac D. Carson has been assigned to Elijah Bailey, of Jo Daviess County, Illinois. The tract entered, instead of containing $1\frac{87}{100}$, contains $6\frac{9}{100}$ acres. Give the assignee notice of the necessity of an additional payment of $\$5\frac{28}{100}$, and when the payment is made, the receiver will charge himself with the amount and issue a receipt of the date of payment, but of the No. 8890, stating it to be an additional payment for the tract sold per that No., and the register will correct the inclosed original certificate in the contents and purchase money endorsing such correction in the mode indicated in pencil on the back of said certificate. Return the corrected certificate to this office, accompanied by the receipt for the additional payment referring in your letter to the date of this.

"Instructions will hereafter be given in reference to entries 3709 and 3710 when the subdivision plat shall have been received from the surveyor general showing the true contents of tracts entered per certificates of said numbers."

Your petitioners show that at the date of this letter, Sarah Ann, Thomas, and Augustine A. Lindsey were minors.

Your petitioners further state, that the Commissioner of the General Land Office of the United States, without any legal or competent authority, undertook to set aside and vacate the entry and purchase of the southwest part of the northeast fractional quarter of section thirty-six (36), in township eighteen (18) north, of range two (2) west of the 4th principal meridian so made by Thomas Lindsey, deceased, at the land office at Galena as aforesaid, and that his orders of re-survey of said premises and cancelling and his attempts to cancel said Lindsey's purchase, so made as aforesaid, were made and attempted without legal power and authority so to do, and his said acts and orders, and surveys so made and ordered by him were and still are illegal and void as against your petitioners.

Your petitioners further state, that the said J. E. Brackett, in the said letters mentioned, was not the attorney of the said petitioners as alleged, nor had he any authority whatever to act for them or any of them, nor was he in any way employed by them or for them or any of them. But your said petitioners say that your petitioner James Lindsey made application to the land office at Dixon, in order to pre-empt the said land for himself, and did for that purpose contest the said David Hawes' right to enter and purchase the same $13\frac{23}{100}$ acres of land aforesaid by pre-emption, and he employed said Brackett as his attorney to resist said Hawes' claim, and that said Brackett did attend to that case for the said James Lindsey and for no other purpose or person, and the said James Lindsey insists that his application for a pre-emption right for himself to said $13\frac{23}{100}$ acres, and his contesting said Hawes' right thereto was no waiver of

his own right or interest to the land as heir at law of said Thomas Lindsey, deceased, which the said deceased in his lifetime acquired of the United States as hereinbefore stated.

Your petitioners further state, that the said land officers at Dixon, under the said instructions from said Shields, heard the proof of said Hawes as to his right of pre-emption under the act of Congress of 1841, to said alleged tract of $13\frac{23}{100}$ acres, and without legal authority so to do, did on the 13th day of December, 1845, illegally allow him to enter and purchase the same under color of his alleged right of pre-emption thereto, and that said Hawes afterwards, to wit, on the first day of March, 1848, obtained a patent for said land from the United States, with notice of your petitioners' prior equity before and at the time he, the said Hawes, entered and purchased the same as aforesaid. Your petitioners say that they are informed and believe that said Hawes and wife, by deed of quit-claim, dated the 14th day of January, A. D. 1846, before the patent issued as aforesaid, conveyed a part of said land to John Holt, and John Holt and wife, by deed of quit-claim of the 2d day of February, A. D. 1846, or thereabouts, conveyed the said part to one Jacob Norris, and Jacob Norris by deed, the date of which is unknown to your petitioners, conveyed the said part to one William L. Lee, and the said William L. Lee and wife by deed of warranty of the 18th day of June, A. D. 1851, or thereabouts, conveyed the said part to one Ann Louisa Jacks, wife of William S. Jacks, and William S. Jacks and wife, by deed of the 3d day of November, A. D. 1853, or thereabouts, conveyed part of the said part to the Chicago and Rock Island Railroad Company, and that William S. Jacks and wife by deed of warranty of the 4th of January, A. D. 1854, or thereabouts, conveyed another part of said part to one David Barnes, and that William S. Jacks and wife by another deed of warranty of the 4th day of January, A. D. 1854, or thereabouts, conveyed still another part of said part to one David Barnes.

That David Hawes and wife, by deed dated about the 12th day of February, A. D. 1853, conveyed a part of said land to the Chicago and Rock Island Railroad Company, that said Hawes and wife, by deed of warranty dated about the 20th day of February, A. D. 1854, conveyed another part of said land to George M. Babcock and David Barnes, and said Barnes and wife conveyed a part of their interest to one William Randel by deed of warranty about the 27th day of October, A. D. 1854.

That George M. Babcock and wife conveyed a part of said tract to David Barnes, by deed of about the 26th day of August, A. D. 1854, who mortgaged a part of it to George M. Babcock.

That David Barnes and wife conveyed a part of said tract to William Lear, by deed of about the 13th day of November, A. D. 1854.

Your petitioners allege that all the persons above named are

citizens of the State of Illinois, except William Jacks and wife, who are citizens of the State of California.

Your petitioners allege that the deeds under which these persons severally claim, are in their possession and beyond the control of your petitioners, and they pray that the said defendants may be compelled to produce the same, and when produced that they may be made part of this petition.

And your petitioners charge that the legal title to said land so entered and purchased by the said Thomas Lindsay as aforesaid, is now in the said Ann Louisa Jacks, and William S. Jacks, David Barnes, William Randel, William Lear, Chicago and Rock Island Railroad Company, and George M. Babcock, who severally, at the time of their said purchases, were bound to take notice of the fact that the said Thomas Lindsey, deceased, in his lifetime had entered and purchased by pre-emption the said land from the United States as aforesaid.

And your petitioners further show that David Hawes, John Holt, Jacob Norris, William L. Lee, David Barnes, George M. Babcock, William Lear, William Randel, and Chicago and Rock Island Railroad Company, are citizens of the State of Illinois, and Ann Louisa Jacks, and William S. Jacks, are citizens of the State af California, and the value of said land and property above specified is two thousand dollars and upwards. Your petitioners file herewith and pray to make part of this bill copies from the General Land Office of the application, proof, and allowance of the pre-emption of the said Thomas Lindsey, the allowance thereof by the register and receiver at Galena, and the certificate by Samuel Hackelton, Register, and duplicate of John Dement, Receiver, copies of the letters of Reed, Whitcomb, Blake, Shields, copies of the application, proof, and allowance of the pre-emption to David Hawes, of the certificate and duplicate to Hawes, and Carson, and Bailey, which have been furnished from the Commissioner of the General Land Office, under the seal thereof, as all the papers pertaining to the case of Thomas Lindsey, deceased, and are marked Exhibit A.

Your petitioners also file and make exhibits, copies of the maps of the original survey by Bennett, and of the resurvey by the said Sargent of said fractional section as hereinbefore stated marked Exhibit B.

And your petitioners also file and make Exhibit C, in this cause, a copy of the patent to said Hawes, and they pray that said defendants, or such of them as have the original patent of the United States, may be compelled to produce the same, and that when produced it may be taken as part of this bill.

And your petitioners state that Thomas Lindsey, long after his settlement and improvement upon said notheast fractional quarter of section thirty-six (36), in township eighteen (18) north, range two (2) west, and before he applied for and obtained a pre-emption thereto as aforesaid, and a short time before he made his proof, caused the

land to be surveyed by one Baxter, a competent surveyor, who placed about one-half of said Lindsey's house and all of his stable on the said fractional quarter section, and the mark of said Baxter is now on a stone in the chimney of said house; that the said Lindsey for years before, and at the time required by said act of June 22d, 1838, had inclosed and cultivated a field which was on the southwest part of said fractional quarter section, about which there has been no dispute at any time by the United States, or other parties in interest. Your petitioners state that the said Thomas Lindsey, deceased, in his life having applied to the Land Office at Galena, the proper land office in good faith for a pre-emption to said land, the same was duly allowed to him on the 3d of June, A. D. 1839, by competent authority.

Your petitioners show that their father, Thomas Lindsey, deceased, claimed the right of pre-emption to the whole of said northeast fractional quarter of section 36. He was allowed a pre-emption on the southwest part only. Thomas Lindsey, the Land Officers at Dixon, the Commissioner of the General Land Office, and all other persons, acquiesced in the allowance of said pre-emption, until the 29th day of March, A. D. 1844. And your petitioners charge that on that day Commissioner Blake, of the General Land Office, without notice to Lindsey or his heirs, without notice to the Land Officers, Hackelton and Dement, or their successors, without any affidavit or case properly made or presented, and on a mere suggestion that there was an error in the meanders of Rock River (which is several miles' distant from said land), on the southeast bank thereof, and without lawful power and authority, suspended the said Thomas Lindsey's entry and purchase as aforesaid, and ordered a resurvey of said land after it had been offered for sale by proclamation of the President, and after it was sold lawfully to the said Thomas Lindsey.

Your petitioners are advised that in this court the action of said Register and Receiver in allowing Thomas Lindsey's right of pre-emption aforesaid, without any appeal to the Commissioner of the General Land Office, was final and conclusive, and it was not competent for the Commissioner to suspend his entry six years afterwards, without notice to him or his heirs.

Your petitioners further show that James Shields, Commissioner of the General Land Office, on the 9th of August, A. D. 1845, more than six years after the entry of Thomas Lindsey, without notice to the said Thomas Lindsey or his heirs, without any appeal made from the decision of the Register Hackelton, and Receiver Dement aforesaid, after they had gone out of office successors had been appointed, after their successors had gone out of office and successors to them appointed, one of whom was the same Dement, on a mere resurvey of said land, which increased the quantity without changing the shape (for said northeast quarter when platted by said Sargent, is cut in two by the meanders of the river by Sargent's survey, as in the former survey by Bennett, United States Surveyor), on a mere ex parte

statement, without any notice to the said Thomas Lindsey or his heirs, of whom at that time, Sarah Ann, Thomas and Augustine A., were infants under 21 years of age, cancelled said entry, and of all which said David Hawes had notice.

Your petitioners allege that Bailey was permitted to pay the increased purchase-money for his land, and that no further steps were taken in relation to the southeast quarter of section thirty-six, on which Thomas Lindsey had a pre-emption right in 1835, and his entry alone has been cancelled, and all the others allowed to stand.

Now your petitioners say if anything like due diligence had been used in this matter, and if the original right of pre-emption of Thomas Lindsey had been set aside in due season, before the land was proclaimed for sale, Thomas Lindsey, or his heirs after his death, could have purchased the same at public sale, or have obtained a pre-emption thereto immediately after the pre-emption act of 1841; for said Hawes does not pretend that he or any one else except Lindsey's heirs, occupied or cultivated this part of said fractional quarter until 1844.

Your petitioners are advised that in this court all the acts of said Commissioner of the General Land Office in suspending and cancelling the pre-emption of Thomas Lindsey, and in re-surveying the said land after it was sold to him, and in allowing a pre-emption and issuing a patent to David Hawes, are illegal, null, and void. That said David Barnes, David Hawes, John Holt, Jacob Norris, William L. Lee, George M. Babcock, William Lear, William Randel, and the Chicago and Rock Island Railroad Company, and Ann Louisa Jacks, and William S. Jacks, are the trustees of your said petitioners, and they can in this court have no title as against the said petitioners.

In tender consideration whereof, and forasmuch as your petitioners are without adequate remedy in a court of law, and can only have adequate relief in a court of equity where such matters are properly cognizable, your petitioners pray for a writ of subpœna to be issued out of this court, directed to said defendants, David Hawes, John Holt, Jacob Norris, William L. Lee, David Barnes, George M. Babcock, William Lear, William Randel, Ann Louisa Jacks, William S. Jacks, and the Chicago and Rock Island Railroad Company, to be and appear before this court, and answer all and singular the allegations of this bill, in as full and ample a manner as if the same were again repeated by way of special interrogatories as to each particular fact. That said defendants may be compelled by decree of this court to surrender and deliver up to your petitioners their title papers hereinbefore mentioned, that said patent to Hawes may be cancelled, and that the said defendants, or such of them as shall appear to have the legal title of said premises entered and purchased by the said Thomas Lindsey in his lifetime, as aforesaid, be decreed to convey the same to your petitioners, and deliver up the possession of said premises to your petitioners, and that your honor will grant

to them such other and further relief in the premises, as is consistent with equity and good conscience.

B. S. MORRIS, Of Counsel.
WHITTAKER & GRANT, Solicitors for Compl'ts.

(Endorsed.) Filed March 29th, 1855.
WM. H. BRADLEY, Clerk.

The exhibits referred to in the bill of complaint, and filed therewith, are in the words and figures following, to wit:—

Exhibit "A."

General Land Office.

Sept. 13, 1854.

I, Chas. S. Frailey, acting commissioner of the General Land Office, do hereby certify that the annexed 48 pages are true and literal exemplification from the originals on file and record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.] CHAS. S. FRAILEY.
Acting Commissioner of the General Land Office.

State of Illinois, Rock Island County, *ss.*

Thomas Lindsey being duly sworn on oath says, that he built a house on the northeast fractional quarter of section No. thirty-six, in township No. eighteen (18) north, range No. two (2) west of the fourth principal meridian, in the year of 1835, and moved in the said house in the year of 1835 with his family, and has lived in it ever since; he further states that he is an actual settler on the aforesaid land, and is the head of a family, being a married man, and is a housekeeper, and in possession by personal residence thereon on the twenty-second day of June, 1838, and four months next preceding which term commenced on the twenty-second day of February, 1838; he further states that he entered upon the aforesaid land which he claims in his own right and exclusively for his own use and benefit, and that he has not directly or indirectly made any agreement or contract in any way or manner, with any person or persons whatever, by which the title which he might acquire from the Government of the United States should inure to the use or benefit of any one except himself, nor has he conveyed or transferred the said land or the title which he may acquire to the same, to any person or persons whatever, at any subsequent time, he therefore.

THOMAS LINDSEY.

Sworn and subscribed to before me, this 10th day of April, A. D. 1839.

MILES M. CONWAY, J. P. [SEAL.]

I apply to the register and receiver of the Land Office in Galena, to enter the northeast fractional quarter of section No. thirty-six, in township No. eighteen north, range No. two west of the fourth principal meridian, according to an act of Congress to grant pre-emption rights to settlers on the public lands, passed the 22d day of June, 1838. THOMAS LINDSEY.

State of Illinois, Rock Island County, *ss.*

We, William Brooks and Lewis C. Underwood, of Rock Island County, State of Illinois, do solemnly swear that we are acquainted with Thomas Lindsey, and know that he is the head of a family, and has a wife and has several children, and that he resides on the northeast fractional quarter of section No. thirty-six, in township No. eighteen north, range No. two west of the fourth principal meridian, and that he has resided on said land and kept house for three years or upwards, up to the present time during the whole time, and is now residing on said land, and has a dwelling house, and has a number of acres under fence on said quarter section of land, part of which is under cultivation. We further swear that we have no interest in his obtaining a pre-emption to said land.

WILLIAM BROOKS.
LEWIS C. UNDERWOOD.

Sworn and subscribed to before me, this 10th day of April, A. D. 1839. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

I, Miles W. Conway, a Justice of the Peace in and for said county, do certify that William Brooks and Lewis C. Underwood, the above affiants, are in my belief persons of truth and veracity, and that full reliance should be given to their statements.

Given under my hand and seal this 10th day of April, A. D. 1839.
MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

I, Joseph Conway, Clerk of the County Commissioners' Court in and for the said county of Rock Island, do certify that Miles W. Conway, Esquire, whose signature appears to the foregoing certificates, was at the time of signing the same, and still is, an acting Justice of the Peace in and for the said county of Rock Island, duly authorized, commissioned, and sworn, and that to all such of his official acts due faith and credit is and ought to be given.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Stephenson, this 10th day of April, 1839.

[L. S.] JOSEPH CONWAY, Clerk.

No. 8460. Land Office, Galena, Ill., June 3d, 1839.

It is hereby certified that in pursuance of law Thomas Lindsey, Rock Island County, State of Illinois, on this day purchased of the Register of this office the lot or southwest p'rt of the northeast fr'cl quarter of section No. thirty-six, in township No. eighteen, of range No. two west, containing five and $\frac{17}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to six dollars and forty-six $\frac{1}{4}$ cents, for which the said Thomas Lindsey has made payment in full as required by law. Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas Lindsey shall be entitled to receive a patent for the lot above described.

[*Cancelled.*]

SAMUEL HACKELTON,
Register.

Pre-emption, 1838.

No. 8460. Receiver's Office, Galena, Illinois, June 3d, 1839.

Received from Thomas Lindsey, of Rock Island County, Illinois, the sum of six dollars and forty-six and $\frac{1}{4}$ cents, being in full payment for the southwest part of the northeast fractional quarter of section No. thirty-six, in township No. eighteen north of the base line, of range No. two west of the fourth principal meridian, containing five and acres and $\frac{17}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

JOHN DEMENT,
Receiver.

$6 46¼.

Pre-emption, 1838.

Washington City, March 17th, 1844.

Com'r Whitcomb.

Dear Sir: By reference to the plat of T. 18, R. 2 west 4th Mer., Rock Island Co., Ill., will see that the south part of the N. E. qr. of sec. 36 is divided into two small fractions by the meanders of the Mississ'i. The original field notes and survey of the meanders of the Miss'i at this place are not correct, for in fact the river does not cut the line between the north and south half of this section, but the strip is several rods wide in its narrowest part, and does not therefore form the two fractions designated in certif'e 8460, of act 1838, and entered June 3d, 1839, and certif. 8890, procured at public sale 26th Sept., 1839, and assigned to Elijah Bailey.

Mr. T. Lindsey procured a pre-emption on the fraction of $5\frac{77}{100}$ acres as per certif. 8460, but by a late survey by the County Surveyor it is found that his house stands *without* the line designated by the original survey of the meanders of the Miss'i, and *between* it and the river bank, and not on fraction to which he gained pre-emption (as per certif. 8460) as laid down on the map or survey, unless you allow the bounds of the fraction to extend beyond the *surveyed* line. His house stands upon *unsurveyed* or lost ground amounting to *nine* acres, and which is a part of the river according to your

plat. Now the question which I desire explained is, whether the certif. 8460, which calls for only 5.77 acres of S. W. frac. of N. E. qr. sec. 36, as above named, will extend over the whole fraction of the south part of that quarter (the north being upon Rock Island, a Military Reser'n) if it be in reality continuous? Or will the division which appears upon the map cut him off from the little fraction of 6.87 acres bought by Isaac D. Corson, in 1839, as per certif. 8890?

Will not the certif. 8460 hold that included in 8890, when they are divided only by an *imaginary* cut off, occasioned by a wrong meandering of the river?

A part of the house also stands upon the niche in the S. E. qr. of this section as shown by the map, and which is held by float laid in 1836, under float act of 1834, as per certif's 3709, 3710. This niche is not estimated in the fraction floated by Johnson and Lathrop, and is without the line designated by the original field notes, and is a part of the Missi., according to the map, but not in reality.

Now to which will this niche belong? to the owner of the house on the unsurveyed or lost ground, or to the owner of the floated S. E. frac. qr. sect. 36? I have made my inquiries more extended than I intended, but the intricacy of the subject will I hope serve as a proper excuse.

Your ob't serv't,
SILAS REED (of Rock Island, Ill's.)

Treasuary Department, March 19, 1844.

To the Com. Gen'l L. Office:—

Dear Sir: In addition to the remarks made by me a few days since in relation to the survey of the south fraction of the N. E. qr. of sec. 36, T. 18, R. 2 W. 4th P. meridian (of Rock Island Co., Ill's), I will add that the river bank along this fraction is altered or changed by the action of the river in no material particular since the original survey, and that the survey, in so far as the meanders of the bank of the Miss. are concerned, is evidently incorrect and never in reality made by the chain and compass. The points named in the field notes evidently vary from those which would exist had the river been actually and accurately meandered. In short, ninety-nine men out of an hundred would decide, after running the lines according to the original notes, that the surveyor, after establishing his corners, travelled along the bank with pencil and note book in hand, putting down such points, and whatever bearing of the compass his judgment dictated, without a critical performance of his duty, since the courses and distances between those established corners would never reach the last corner in starting from the first.

Respectfully, your ob't serv't,
SILAS REED.

March 31st, 1844.

Sir: I herewith inclose copies of two communications addressed to this office by Mr. Silas Reed, bearing date the 17th and 19th inst., relative to an alleged error in the meanders of Rock River in the original survey of fract. sec. 36, T. 18 N., R. 2 W. of the 4th P. M., Ill's, by which it would seem that a quantity of land on which stands the house of a pre-emption claimant was excluded as therein explained.

In order to enable this office to act on the cases thereby presented, I have to request that you will cause proper examination to be made by some person convenient to the spot, on whom you can rely, and report the facts to this office, accompanied by a map showing the precise position of Mr. Lindsey's house in reference to the quarter section lines.

If the deputy, who made the original survey, has been as faithless as represented, he should be made to pay the whole expense of the examination, if the same can be deducted from any existing contract that he may have, and should be discharged from the service.

I am, very resp'ly, your ob. st.,
JAS. WHITCOMB, Comm'r.

W. Milburn, S. G., St. Louis, Mo.

General Land Office, March 29th, 1844.

Sir: I have the honor to return herewith the letter of J. E. Brackett received in yours of the 27th inst., and in reply to the same have to state that entry 8460, in the name of Thomas Lindsey, for the S. W. part of the N. E. fr'l qr. 36, T. 18 N., R. 2 W. of the 4th prin. mer., has been suspended at this office, because of an alleged error in the survey of the meanders of Rock River on the southern side or left bank, descending through said N. E. fr'l quarter.

Mr. Lindsey claimed the south part of the N. E. fr'l qr. in his proof, but as the plat shows the said south part to be divided into two distinct and separate fractions, he was allowed only to enter one of said fractions, viz., the S. W. part, containing $5\frac{17}{100}$ acres.

It is alleged that the river, instead of passing out of the N. E. fr'l qr. and cutting the S. E. qr. as indicated on the plat of survey, really passes wholly within the N. E. qr., thus leaving a continuous strip of land bounded by the river on the north, and the sectional and quarter sectional lines of the N. E. qr. on the other sides, and that the house of Mr. Lindsey is actually on that portion of said strip containing about nine acres, which by said plat is now represented as part of the river. The surveyor general's attention was heretofore called to this subject, and the entry of Mr. Lindsey and others affected by the alleged error, suspended to await his report on the subject. No reply has been received from him, and he will

be directed to furnish a reply to the previous communication without delay. With much respect, your obt. servt.

THO. H. BLAKE, Comms.

To Hon. J. P. Hoge, House of Representatives, U. S.

April 2d, 1844.

Sir—Your early attention is requested to the communication from this office of 31st March, 1841, relative to an alleged error in the meanders of that part of Rock River adjacent to fract'l Sec. 36, T. 18 N., R. 2 W. of the 4th P. M., Illinois, by which, it is stated, the land upon which is situated the dwelling of Mr. Lindsey, a pre-emptor, does not appear upon the township plats.

You will immediately have the necessary investigation made, and report the facts to this office.

Very respectfully, your obt. servt.

THO. H. BLAKE, Comms.

S. Reed, S. Gen'l, St. Louis, Mo.

June 1, 1844.

Sir—It is evident from your letter of the 13th ult'o, that there is an error in meandering the south bank of that part of Rock River adjacent to fractional section 36, T. 18 N., R. 2 W. of 4th P. M., unless there has been an accretion to the S. E. qr. of that section since the survey was made. To settle this matter, you will please appoint a deputy to make the necessary examinations, and if the original survey was correct, and the alteration in the south bank of the river adjacent to said fractional section has been produced by accretion, that original survey must govern ; but if not, let him correct the survey of that bank of the river as far as necessary, for which service he can be paid out of the fund appropriated for detached and unfinished surveys.

You will please report the result of this examination as speedily as possible ; and if the survey be corrected, forward corrected plats of the section to this and the district office, that the whole subject may be finally closed.

Very respectfully, your obt. servt.

THO. H. BLAKE, Comms.

S. Reed, Esq., S. G., St. Louis, Mo.

Surveyor's Office, St. Louis, 21st September, 1844.

Sir—Instructions were this day issued, directed to George B. Sargent, to execute the surveying mentioned in your letters of the 31st of March, 1841, and the 2d of April and 1st of June, 1844, in fr'l Sec. 36 (south of the main shore of the Mississippi River), T. 18 N., R. 2 W. 4th P. M.

I am, very respectfully, your obedient servant,

SILAS REED, Surveyor General.

Thomas H. Blake, Esq., Commissioner of the Gen'l Land Office, City of Washington.

Surveyor's Office, St. Louis, June 20th, 1845.

Sir—Herewith inclosed is a plat of the north fractional half (south of the Mississippi River) of fract'l section 36, T. 18 N., R. 2 W. 4th P'l M'n.

As there appears to be a difficulty in respect to a pre-emption, it was thought best to subdivide the N. E. fract. quarter, in order that it may be disposed of in one or two tracts, as may be determined by you or the register at Dixon.

If the N. W. frac'l quarter has been sold, I presume the old area thereof will have to be retained.

No alteration will be made in the areas set down on the original plat of said fractional half until the pre-emption case is decided or further instructions received from you on the subject.

A similar plat to the one inclosed has this day been transmitted to the Dixon Land Office.

Very respectfully your ob'd't serv't,
F. A. CONWAY, Surveyor of the Public Lands in States of Illinois and Missouri.

James Shields, Esq., Commissioner of the General Land Office, Washington City.

No. 8890. Land Office at Dixon, Illinois, February 25th, 1846.

It is hereby certified that in pursuance of law, Isaac D. Corson, of Jo Daviess County, State of Illinois, on the 26th Sept., 1839, purchased of the then register of this office the lot or southeast part of the northeast fractional quarter of section No. thirty-six, in township No. eighteen north, of range No. two west, containing six and $\frac{9}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to seven dollars and sixty-two cents, for which the said Isaac D. Corson has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said Isaac D. Corson shall be entitled to receive a patent for the lot above described. GEO. MIXTER, Register.

No. 8890. Receiver's Office, Galena, Ill., September 26th, 1839.

Received from Isaac D. Corson, of Jo Daviess County, Illinois, the sum of two dollars and thirty-three and $\frac{3}{4}$ cents, being in full payment for the southeast part northeast fractional quarter of section No. thirty-six, in township No. eighteen north of the base line, of range No. two west of the fourth principal meridian, containing one acre and $\frac{87}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

$2.33\frac{3}{4}$. JOHN DEMENT, Receiver.

For value received I, Isaac D. Corson, of Jo Daviess County of Illinois, do hereby sell and assign, subject to all equity existing between me and the United States, unto Elijah Bayley, of Jo Daviess

County, Ill's, all my right and title to the land designated as per receiver's receipt No. 8890, as the southeast part of the northeast fractional quarter of section No. thirty-six, of township No. eighteen N., of range No. two west of the 4th pr'l meridian, in the district of lands subject to sale at Galena, Ill's.

Witness my hand, this 21st day of Sept'r, 1849.

ISAAC D. CORSON.

Attest: L. STEWART,
CHARLES DEMENT.

Acknowledged before me, this 21st day of September, 1840.

SAMUEL HACKELTON, Register.

Supplemental No. 8890. Receiver's Office, Dixon, Ill's, February 25, 1846.

Received from Elijah Bailey, of Jo Daviess County, Illinois, assignee of Isaac D. Corson, the sum of five dollars and twenty-eight cents as an additional payment on entry number 8890, in accordance with letter of Commissioner of the General Land Office, dated August 9th, 1845.

$5.28. JOHN DEMENT, Receiver.

This day came William Brooks, of the county of Rock Island, and State of Illinois, and being first duly sworn, deposeth and says that he witnessed the improvement made by Thomas Lindsey upon the frac. sec. 36, T. 18 N., R. 2 W. of the 4th P. M., upon which improvement said Lindsey obtained a pre-emption right to the S. W. part of the N. E. frc. qr. of said section, township and range. Whereas the improvement referred to by said Thomas Lindsey in his application for said pre-emption was located upon the S. E. qr. of said section, and that previous to his application and entry no house had been built upon said S. W. part of the N. E. qr. of said section 36, T. 18 N., R. 2 W. of 4th P. M.

I, the said William Brooks, having certified in a former affidavit that said Lindsey had made improvement by building a house on the S. W. part of the N. E. frc. of said sec. 36, T. 18 N., R. 2 W. of 4th P. M., was mistaken in consequence of the incorrectness of the former survey. The resurvey by Sargent, U. S. Dep. Surveyor, made last fall of said fr'l section, shows the fact to be as above set forth.

WM. BROOKS.

Subscribed and sworn to before me, this 25th day of July, A. D. 1845.

WM. VANDEVER,
Clerk of the County Commis. Court
of Rock Island County.

This day came Jacob Norris, and being first duly sworn, deposeth and says, that he was present and witnessed at the resurvey of the frac. section 36, T. 18 N., R. 2 W. of the 4th P. M., made last fall by Sargent, U. S. Dep. Surveyor, and that the house of Thomas

Lindsey is located on the S. E. qr. of said section 36, and to the best of my knowledge and belief said Thomas Lindsey never erected or occupied a house on the S. W. part of the N. E. frc. qr. of sec. 36, T. 18 N., R. 2 W. of 4th P. M., and I do further certify that David Hawes' improvements upon which he claims pre-emption are upon said S. W. part of N. E. frc. qr. sec. 36, T. 18 N., R. 2 W. of 4th P. M., that said Hawes erected a dwelling house thereon in the month of October, 1844, and has occupied the same with his family ever since, and still occupies it, and has made other valuable improvements thereon.

JACOB NORRIS.

Subscribed and sworn to before me this 25th day of July, A. D. 1845.

W. M. VANDEVER.
Clerk of the County Commissioners' Court of Rock Island County.

This day came John Buford, of the county of Rock Island, and State of Illinois, and being first duly sworn, deposeth and says, that the improvements and dwelling house upon which Thomas Lindsey, on the 3d of June, 1839, entered under the pre-emption law of 1838, the S. W. part of the N. E. frc. qr. sec. 36, T. 18 N., R. 2 W. of 4th P. M., are not upon said fraction, but upon the S. E. frc. qr. sec. 36, T. 18 N., R. 2 W. of 4th P. M., and that David Hawes erected a dwelling house on said S. W. part of the N. E. frc. qr. sec. 36, T. 18 N., R. 2 W. of 4th P. M., in the month of October, 1844, and has occupied the same with his family ever since, and still occupies it, and has made other valuable improvements thereon.

JOHN BUFORD.

I hereby certify that the facts set forth in the foregoing affidavit are true to the best of my knowledge and belief.

LEMUEL ANDREWS.

Subscribed and sworn to by John Buford and Lemuel Andrews, before me, this 25th day of July, A. D. 1845.

W. M. VANDEVER.
Clerk of the County Commissioners' Court of Rock Island County.

To Hon. James Shields, Commissioner of Gen'l Land Office.

It appears from the books of the Land Office at Dixon, Illinois, that the S. W. part of the N. E. frc. qr. sec. 36, T. 18 N., R. 2 W. of the 4th P. M., was entered by Thomas Lindsey under the pre-emption law of 1838, on this 3d day of June, A. D. 1839. Whereas, the undersigned would respectfully beg leave to represent that said Thomas Lindsey never erected a house of any kind on the above described piece of land, neither has such improvement been made by any other person until the undersigned in the month of October, 1844, built a dwelling-house upon said land, and has ever since occupied it with his family, and has filed an application for a pre-emp-

tion on said land, which said facts are verified by the accompanying affidavits of Wm. Brooks, John Buford, Lemuel Andrews, and Jacob Norris; therefore the undersigned would pray a re-investigation of the facts in relation to said entry by Linsdey.

DAVID HAWES.

Rock Island, July 25th 1845.

State of Illinois, Rock Island County, *ss.*

James Lindsey being first duly sworn, states under oath, that in the year 1839 or forty, his father, Thomas Lindsey, now deceased, pre-empted and entered, as this deponent believes, under the pre-emption law of 1838, at the Land Office then kept at Galena, Ill., the south part of N. E. fr. qr. sec. 36, Town. 18 N., R. 2 W. of 4th Pr. M.; that his father resided with his family on said land all the time for about four years, and that afterwards, on account of some inaccuracy in the original government survey of said land, which was not discovered until said land was re-surveyed by the government in 1844, said pre-emption and entry were cancelled by the department; that in October, 1844, this deponent being then in possession of the land, and living on it in a dwelling which he had recently erected, verily believed that he had a valid right of pre-emption under the pre-emption law of 4th Sept. 1841; that he accordingly went to the United States Land Office at Dixon, Illinois, and filed in the Register's Office a notice that he had commenced improvements, and of his intention to claim said land under said law of 1841; that while this deponent was gone to Dixon for the purpose aforesaid, one David Haws commenced improvements on the same land, and immediately thereafter filed his notice in said Land Office, to claim said land under the same law; that said Haws on his return from Dixon, aided and assisted by others, entered upon said land, and forcibly and riotously pulled down the dwelling-house of this deponent; that this deponent immediately thereafter rebuilt said dwelling-house, when said Hawes again in like manner in the night time entered upon said land and destroyed said dwelling-house of this deponent, in which this deponent with his widowed mother were then residing, forcibly driving this deponent off from said land, in order, as this deponent believes, to prevent him from continuing his residence, so as to entitle him to claim the benefits of said last mentioned pre-emption laws. And further, that George Mixter Esq., the present Register of said Land Office at Dixon, was at the time of, and during the occurrences before mentioned, living in the same neighborhood; that said occurrences were at that time notorious in said neighborhood and generally talked of by the people, and this deponent believes, and has good reason to believe, that said Mixter at the time knew of the whole transactions; that after said Mixter was appointed to be Register of said Land Office, he informed this deponent that an investigation of the respective rights of this deponent and said Hawes to said land, had been ordered by the depart-

ment, and notified him that said investigation would take place at said Land Office at Dixon, on the 13th of December inst.; that this deponent did not attend at said investigation with his witnesses, for as this deponent has, and verily believes, said Mixter before the time for said investigation had arrived, expressed an unqualified opinion that it would be useless for this deponent to attend, as he could not in any event hold said land, the distance from the residence of this deponent to Dixon being seventy miles. And further, this deponent knows that said Mixter and said Haws are, and have been for years past, intimate friends.

JAMES LINDSEY.

Sworn to, and subscribed before me, this 30th day of December, A. D. 1845. MORGAN FERGUSON, J. P.

State of Illinois, Rock Island County, *ss.*

James Copp states under oath that he has been well acquainted with James Lindsey for about ten years last past, having lived in the same neighborhood with him during that time at Rock Island (Island), Ill., and that the said Lindsey's character for truth and veracity is good, and that his statements are to be relied on.

JAMES COPP.

Sworn to and subscribed before me, this 30th day of December, A. D. 1845. MORGAN FERGUSON, J. P.

State of Illinois, Rock Island County, *ss.*

I, W. M. Vandever, Clerk of the County Commissioners' Court of said county, do hereby certify that Morgan Ferguson, whose name appears to the foregoing certificate, was on the day and date thereof an acting justice of the peace in and for said county regularly commissioned and qualified, and as such full faith and credit are due to all his acts.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Rock Island, this thirtieth day of December, A. D. 1845.

[L. S.] W. M. VANDEVER, Clerk.

State of Illinois, Lee County, *ss.*

I, John Wilson Drury, of the county of Rock Island and State of Illinois, do solemnly swear that I am personally acquainted with David Hawes, the applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six (36), township No. eighteen (18) north, range No. two (2) west of the 4th principal meridian, subject to sale at Dixon, Illinois, and know that he is an actual settler and has erected a substantial dwelling-house with three rooms on the ground floor thereon, that he is over twenty-one years of age, and the head of a family, having a wife and children, and is in possession of said land by personally

residing and keeping house with his family therein; that said settlement was commenced by him on or about the 22d day of October, A. D. 1844, and that he moved into said house with his family on or about the 1st day of Nov., A. D. 1844, and that he has continued to reside thereon and make it his home with his family from that time to the present, and to the best of my knowledge there are no salines or indications of lead mineral upon any part of said tract; that no part of said tract has been laid out into lots for the purpose of a village, town, or city, and that I have no interest in obtaining this pre-emption.

J. WILSON DRURY.

I, George Mixter, Register of the Land Office at Dixon, Illinois, do hereby certify that the above affidavit was taken and subscribed before me, this 13th day of Dec'r, 1845.

GEO. MIXTER, Register.

Affidavit required of Pre-emption Claimant.

I, David Hawes, claiming the right of pre-emption under the provisions of the act of Congress entitled, "An act to appropriate the proceeds of the sale of the public lands and to grant pre-emption rights," approved September 4, 1841, to the S. W. part N. E. fr'l quarter of section number thirty-six, of township number eighteen, of range number two west, subject to sale at Dixon, Illinois, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title which I may acquire from the government of the United States should enure in whole or in part to the benefit of any person except myself. I am a citizen of the United States, and have not left my residence upon my own land to acquire this pre-emption.

DAVID HAWES.

I, George Mixter, Register of the Land Office at Dixon, Ill's, do hereby certify that the above affidavit was taken and subscribed before me, this 13th day of Dec'r, A. D. 1845.

GEO. MIXTER, Register.

No. 21227. Land Office at Dixon, Illinois, Dec. 13th, 1845.

It is hereby certified that in pursuance of law, David Hawes, of Rock Island County, State of Illinois, on this day purchased of the Register of this office the lot on southwest part of northeast fractional quarter of section No. thirty-six, in township No. eighteen of

range No. two west, containing thirteen and $\frac{23}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to sixteen dollars and fifty-four cents, for which the said David Hawes has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said David Hawes shall be entitled to receive a patent for the lot above described.

GEO. MIXTER, Register.

Pre. Act, 1841.

No. 21227. Receiver's Office, at Dixon, Illinois, Dec. 13th, 1845.

Received from David Hawes, of Rock Island County, Ill's, the sum of sixteen dollars and fifty-four cents, being in full for the south-west part of the northeast frct'l quarter of section No. thirty-six, in township No. eighteen of range No. two west, containing thirteen acres and twenty-three hundredths, at $1 25 per acre.

$16 54. JOHN DEMENT, Receiver.

General Land Office, August 9th, 1845.

Gentlemen: The letter of the Register, of the 20th ult., with its inclosures in reference to the claim of David Hawes for the S. W. p't of the N. E. fr'l q'r 36, T. 18 N., R. 2 W., has been received.

In consequence of a reported error in the survey of the meanders of the river Mississippi, bounding said N. E. fr'l q'r on the north, which affected the shape and contents of said N. E. fr'l q'r as well as the S. E. fr'l q'r, north of the old Indian boundary line, the following entries made at your office were suspended to await the return of the plat of resurvey directed by this office, viz:—

Entry 3709, E. $\frac{1}{2}$ S. E., 36.18 N., R. 2 W., as containing $56\frac{58}{100}$ acres.

Entry 3710, W. $\frac{1}{2}$ S. E., 36.18 N., R. 2 W., as containing $54\frac{27}{100}$ acres.

Entry 8460, S. W. p't N. E. fr'l q'r R. 2 W., as containing $5\frac{17}{100}$ acres.

Entry 8890, S. E. p't N. E. fr'l q'r R. 2 W., as containing $1\frac{87}{100}$ acres.

By the plat of said resurvey recently received from the Surveyor General in reference to the said N. E. fr'l q'r, it appears that the river instead of entering the S. E. q'r, as shown on the old plat, occupies a place some distance north of its position on that map, making the contents of the S. W. p't N. E. fr'l q'r $13\frac{23}{100}$ instead of $5\frac{17}{100}$ acres, and of the S. E. p't N. E. fr'l q'r $6\frac{9}{100}$ instead of $1\frac{87}{100}$ acres, and adding also to the contents of the fractional parts of the S. E. fr'l q'r north of the old Indian boundary. The quantity of that addition to each of said latter tracts is not shown by said plat of resurvey, and the surveyor general will be directed to return to your

office, and this a plat of the latter subdivisions, with a view to the correction hereafter of entries 3709 and 3710, if deemed necessary.

Entry 8460, in the name of Thomas Lindsey, is founded upon the pre-empt. law of 22d June, 1838, the proof averring a residence on the S. W. fr'l q'r, the tract entered. The plat of reserving shows that the house and stable of Mr. Lindsey was not on said tract, but on the E. p't of the S. E. fr'l q'r, which was not public land on 22d June, 1838, having been sold per certif. 3709, in March, 1836. Mr. Lindsey therefore had no right of pre-emption as certif. 8460 has been cancelled.

From a letter received at this office from J. E. Brackett, Esq., it would appear that Mr. L. is deceased, and that he is acting as the attorney for said heirs. Be pleased to give him notice of this action on the claim of Mr. L., and that upon proper application through you, steps will be taken to have the money refunded.

In reference to the claim of David Hawes to this tract by reason of his settlement on the same in Oct'r, 1844, be pleased to give him notice that you are ready to receive proof of his right, and to adjudicate his claim, due notice being also given to the representative of Mr. Lindsey.

Entry 8890, in the name of Isaac D. Corson, has been assigned to Elijah Bayley, of Jo Daviess County, Illinois. The tract entered instead of $1\frac{87}{100}$ acres contains $6_{\text{I}}\frac{9}{00}$ acres. Give the assignee notice of the necessity of an additional payment of $\$5\frac{28}{100}$, and when that payment is made the Receiver will charge himself with the amount, and issue a receipt of the date of payment, but of the No. 8890, stating it to be an additional payment for the tract sold per that No., and the Register will correct the inclosed original certificate in the contents and purchase money, endorsing such correction in the mode indicated in pencil on the back of said certificate. Return the corrected certificate to this office, accompanied by the receipt for the additional payment, referring in your letter to the date of this. Instructions will hereafter be given in reference to entries 3709 and 3710, when the subdivisional plat shall have been received from the surveyor general showing the true contents of the tracts entered per certificates of said numbers.

Respectfully, your ob't serv't,
JAS. SHIELDS, Comm'r.

Register and Receiver, Dixon, Illinois.

State of Illinois, Rock Island Co., *ss.*

I, Jacob Starr, of Rock Island County, Illinois, do solemnly swear that I am personally acquainted with David Hawes, an applicant on the 13th of Dec'r, 1845, for a pre-emption right to the S. W. part of N. E. fractional ¼ section 36, T. 18, R. 2 west, and know that at the date of his settlement on the tract claimed by him he was a

citizen of the United States, and that he did not have land of his own in the State of Illinois to make his settlement.

JACOB STARR.

Subscribed and sworn to before me, this 2d day of February, A. D. 1846. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

I, William Vandever, Clerk of the County Commissioners' Court of Rock Island County, do hereby certify that Miles W. Conway was, on the second day of February, A. D. 1846, an acting Justice of the Peace in for said county, regularly commissioned and qualified, and as such full faith and credit are due to all his official acts.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Rock Island, this 12th day of February, A. D. 1846.

[L. S.] W. M. VANDEVER, Clerk.

General Land Office, March 11th, 1846.

Gentlemen: An affidavit has been filed in this office taken by James Lindsey in reference to his claim by pre-emption to the S. W. part of N. E. fr'l qr. 36, T. 18, R. 2 W., under act of 4th Sept., 1841, which tract it appears has been entered, per certif. No. 21227, by David Hawes under that act.

It is alleged by Mr. Lindsey that, in October, 1844, the said tract was in his possession by personal residence in a dwelling which he had then recently erected; that he went to the Register's Office at Dixon and filed his notice, and that whilst he was gone to Dixon for that purpose one David Hawes commenced improvements on the same land, and immediately thereafter filed his notice; and that said Hawes, aided and assisted by others, entered upon said land and forcibly and riotously pulled down the dwelling-house of this deponent on his return from Dixon; that deponent immediately thereafter rebuilt said dwelling, when said Hawes again in like manner, in the night time, entered upon said land and destroyed said dwelling-house of this deponent, in which he with his widowed mother were then residing, forcibly driving this deponent off from said land; that the present register was at the time of these occurrences living in the same neighborhood, and that said occurrences being at the time notorious in the neighborhood, and generally talked of by the people, the deponent has good reason to believe that Mr. Mixter knew of the whole transactions; that after the said Mixter was appointed register, he informed this deponent that an investigation of the respective rights of himself and said Hawes would be had on the 13th December last, but that this deponent did not attend at that time on account of his belief that said register had expressed an unqualified opinion that it would be useless for this deponent to attend, as he could not in any event hold said land, the distance from the residence of this deponent to Dixon being seventy miles.

The reports from your office do not indicate that "a notice in writing" as required by law was ever filed in the Register's Office, as alleged by Mr. Lindsey.

You will give notice to Mr. Lindsey and Mr. Hawes of a time and place, when, and where testimony will be taken in reference to the claim of Mr. Lindsey, and any additional testimony which may be deemed necessary by Mr. Hawes in support of his claim.

The first point will be the establishment of the fact of the filing by Mr. Lindsey, of the notice required by law, then the production of testimony as it regards his settlement on the land, and the causes which prevented his continued residence.

Upon this testimony you will make a decision as to the right of pre-emption, affording the party against whom such decision may be, the opportunity of taking an appeal to the Secretary of the Treasury, as provided for in the 11th sect. of the act of the 4th Sept. 1841.

Respectfully,
Your ob't serv't,
JAS. SHIELDS, Commis'r.

Register and Receiver,
Dixon, Illinois.

P. S.—In reference to the taking of the testimony, let the same course be pursued in this case as is pointed out in the postscript to the letter to you of this date in the case of Lewis Shemway.

J. S.

To James Lindsey.

Sir, you will please take notice that on Saturday next, the eleventh day of April, instant, we shall proceed to take the testimony of Jacob Norris, Joseph Conway, William Brooks, Jacob Starr, Lemuel Andrews, B. F. Barrett, B. J. Cobb, and others, witnesses before Miles W. Conway, a Justice of the Peace of the county of Rock Island, State of Illinois, at his office, in the town of Rock Island, to commence at ten o'clock A. M., and continue until the testimony is all taken, to be read in evidence on the re-hearing of a certain disputed pre-emption case between you and David Hawes, before the Register and Receiver of the Land Office, at Dixon, on the 17th day of the present month.

Dated at Rock Island, the 8th day of April, 1846.

KNOX & DRURY,
Att'ys for HAWES.

Depositions taken before me, Miles W. Conway, a Justice of the Peace of the county of Rock Island, State of Illinois, at my office, in the town of Rock Island, on the eleventh day of April, A. D. 1846, commencing at eleven o'clock in the morning of said day, on the part of David Hawes, in a disputed pre-emption case between said Hawes and James Lindsey.

State of Illinois, Rock Island County, *ss.*

Jacob Norris, being duly sworn according to law, deposeth and

says, that he is acquainted with David Hawes, and knows that he is an applicant for a pre-emption, for the southwest part of the northeast fractional quarter of section No. thirty-six, in township No. eighteen north, range two west of the 4th P. M., and knows that he is an actual settler on said land, and has erected a dwelling-house thereon; the house is a substantial wood, with three rooms; and he also has a barn and other suitable out-buildings on said land, and that said Hawes is over twenty-one years of age, and that he is the head of a family, having a wife and two children, and is in possession of said land, personally residing and keeping house with his family thereon; and that said settlement was commenced by said Hawes on or about the 23d day of October, A. D. 1844, and that he has continued to reside thereon, and makes it his home from that time to the present, and there are no salines or indications of lead mineral upon any part of said land; that no part of said land has been laid out into lots for the purpose of a village, town, or city, and do know that David Hawes is a citizen of the United States. The deponent further says, that he resides near said tract of land, and has resided near said land for about three years, and during that time, very frequently, was in the habit of passing over said tract of land, and knows that there has been no dwelling-house on said tract of land, except Mr. Hawes', for the last six years; and I am acquainted with James Lindsey, and know that he told me that he lived about three miles above Davenport, in the Iowa Territory, and has lived in said territory four or five years, and he told me that he was cultivating two farms in said territory. And the deponent further states, that said Lindsey erected a pen on said land in the fore part of the summer of 1843, six by eight feet, had neither roof, floor, or door; the said pen was erected by two corners, fastened to two saplings growing, and the other two corners was fastened by two poles stuck in the ground; the said pen was not occupied previous to the settlement of said Hawes, for sixteen months, and that it blew down soon after its erection; and the deponent further knows that said Hawes did not leave any land of his own to settle on said land.

JACOB NORRIS.

Subscribed and sworn to before me, this 11th day of April, A. D. 1846.

MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

William Brooks being duly sworn according to law deposeth and says: That he is personally acquainted with David Hawes, and knows that he is an applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six, in township No. eighteen north, range two west of the 4th P. M.; and I know David Hawes is a citizen of the United States, and know that he is an actual settler on said land, and that he has erected a comfortable and substantial dwelling-house thereon; and know also

that he has erected a barn and other suitable outbuildings on said land, and that he is over twenty-one years of age, and is the head of a family, having a wife and two children; and is in possession of said land, by personal residing and keeping house with his family thereon; said settlement was commenced by said Hawes on or about the 23d day of October, A. D. 1844, and he has continued to reside on said land from that time until the present; and to the best of my knowledge there are no salines or indications of lead mineral upon any part of said land; that no part of said land has been laid out into lots for the purpose of a village, town or city, and that I have no interest in obtaining this pre-emption. And the deponent further states, that I have resided about one mile and a half of said land about ten years, and during said ten years I was almost daily crossing said land, and about three years ago a shanty was erected on said land by James Lindsey, as I believe; the said shanty was about six by eight feet; two of the corners were fastened by stakes driven into the ground, and the other two fastened to saplings growing; the said shanty had no floor or door, and could not be occupied as a dwelling-house; from the time the shanty was built until the commencing of the settlement of said Hawes was about sixteen months; no person occupied said shanty during said sixteen months, not that I know of; no fire was ever built in said shanty. The deponent further states that he is acquainted with James Lindsey; the said James Lindsey told him that he owned a farm and cultivated it, about a mile from Devonport, in the territory of Iowa; the said Lindsey has been a resident of Iowa Territory about five or six years, and was a resident of Iowa Territory at the time of building said shanty.

WILLIAM BROOKS.

Subscribed and sworn to before me, this 11th day of April, A. D. 1846.

MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

Benjamin F. Barrett being duly sworn according to law deposeth and says: That he is personally acquainted with David Hawes, and knows that he is an applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six, in township eighteen north, range two west of the 4th P. M.; and I know that David Hawes is a citizen of the United States, and knows that he is an actual settler on said land, and that he has erected a comfortable and substantial dwelling-house thereon; also a barn and other out houses; and that said Hawes is over twenty-one years of age, and that he is the head of a family, having a wife and two children, and is in possession of said land, personally residing and keeping house with his family thereon; and that said settlement was commenced by said Hawes on or about the 24th day of October, A. D. 1844, and that he has continued to reside thereon and make it his home from that time to the present; and to the best

No 215. Lindsey vs Hawes &c. 1851

Exhibit "A."

Tp. 18. North Range 2 West of 4 pt Mdn

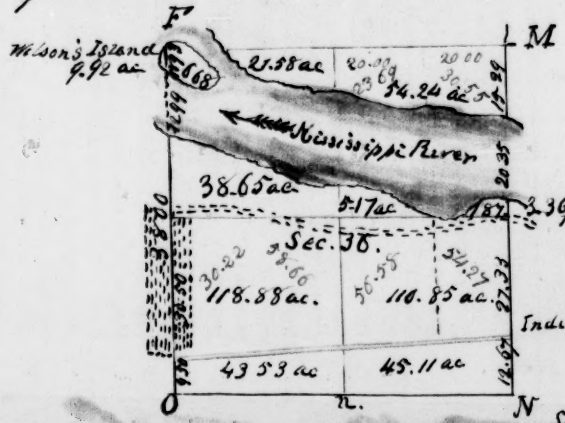


Exhibit "A"

of my knowledge there are no salines or indications of lead mineral upon any part of said land ; that no part of said land has been laid out into lots for the purpose of a village, town, or city, and that I have no interest in obtaining the pre-emption.

B. F. BARRETT.

Subscribed and sworn to before me, this 11th day of April, A. D. 1846.

MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

Jacob Starr being duly sworn according to law, deposeth and says, that he is personally acquainted with said Hawes, and knows he is an applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six, in township eighteen north, range two west of the 4th P. M., and I know that said Hawes is a citizen of the United States, and know that he is an actual settler on said land, and that he has erected a comfortable dwelling house thereon, also a barn and other out houses, and that said Hawes is over twenty-one years of age, and that he is the head of a family, having a wife and two children, and is in possession of said land, personally residing and keeping house with his family thereon, and that said settlement was commenced by said Hawes on or about the 24th day of October, A. D. 1844, and that he has continued to reside thereon, and makes it his home from that time to the present, and to the best of my knowledge there are no salines or indications of lead mineral upon any part of said land, that no part of said land has been laid out into lots for the purpose of a village, town, or city, and that I have no interest in obtaining this pre-emption.

JACOB STARR.

Subscribed and sworn to before me, this 11th day of April, A. D. 1846. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

Joseph Conway being duly sworn according to law, deposeth and says, that he is personally acquainted with David Hawes, and knows that he is an applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six, in township eighteen north, range two west of the 4th P. M., and I know that David Hawes is a citizen of the United States, and knows that he is an actual settler on said land, and that he has erected a comfortable and substantial dwelling house thereon, also a barn and other out houses, and that said Hawes is over twenty-one years of age, and that he is the head of a family, having a wife and two children, and is in possession of said land, personally residing and keeping house with his family thereon, and that said settlement was commenced by said Hawes on or about the 24th day of October, A. D. 1844, and that he has continued to reside thereon, and makes is

his home from that time to the present, and to the best of my knowledge there are no salines or indications of lead mineral upon any part of said land, that no part of said land has been laid out into lots for the purposes of a village, town, or city, and that I have no interest in obtaining this pre-emption. JOS. CONWAY.

Sworn and subscribed to before me, this 11th day of April, A. D. 1846. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

Benjamin J. Cobb, being duly sworn according to law, deposeth and says, that he is personally acquainted with David Hawes, and knows that he is an applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six, in township eighteen north, range two west of the 4th P. M., and I know that David Hawes is a citizen of the United States, and know that he is an actual settler on said land, and that he has erected a comfortable and substantial dwelling-house thereon, also a barn and other out-houses, and that said Hawes is over twenty-one years of age, and that he is the head of a family, having a wife and two children, and is in the possession of said land, personally residing and keeping house with his family thereon, and that said settlement was commenced by said Hawes on or about the 24th day of October, A. D. 1844, and that he has continued to reside thereon and makes it his home from that time to the present; and to the best of my knowledge there are no salines or indications of lead mineral upon any part of said lands, that no part of said land has been laid out into lots for the purposes of a village, town, or city, and that I have no interest in obtaining this pre-emption. And the deponent further states, that he knows that said Hawes did not leave other land of his own to settle on said tract. And he further states, that he very frequently passed over said land during the last five years, and he knows that there was no other dwelling-house or building suitable for a dwelling on said land except the one erected by said Hawes.

(No signature.)

Subscribed and sworn to before me, this 11th day of April, A. D. 1846. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

Lemuel Andrews, being duly sworn according to law, deposes and says, that he is personally acquainted with David Hawes, and knows that he is an applicant for a pre-emption right to the southwest part of the northeast fractional quarter of section No. thirty-six, in township eighteen north, range two west of the 4th P. M., and I know that said Hawes is a citizen of the United States, and knows that he is an actual settler on said land, and that he has erected a comfortable dwelling-house thereon, also a barn and other out-houses, and that said Hawes is over twenty-one years of age, and that he is the

head of a family, having a wife and two children, and is in possession of said land, personally residing and keeping house with his family thereon, and that said settlement was commenced by said Hawes on or about the 24th day of October, A. D. 1844, and that he has continued to reside thereon and makes it his home from that time to the present; and to the best of my knowledge there are no salines or indications of lead mineral upon any part of said land, that no part of said land has been laid out into lots for the purposes of a village, town, or city, and that I have no interest in obtaining this pre-emption. The deponent further says, that he knows that said Hawes did not leave any land of his own to settle on said land. I have resided about a mile and a half from said land about nine years, and have very frequently passed over said land and never knew any dwelling-house or any house suitable to dwell in on said land prior to the settlement of said Hawes. The deponent further says, that when George Mixter, the present Register of the Land Office at Dixon, was at Rock Island, he was frequently in conversation with him and in his company, and he has heard said Mixter speak about this disputed pre-emption case, and that he does not recollect of ever hearing him express an opinion as to which of the parties was entitled to the pre-emption. LEMUEL ANDREWS.

Subscribed and sworn to before me, this 11 day of April, A. D. 1846. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, Rock Island County, *ss.*

I, Miles W. Conway, a Justice of the Peace of the county of Rock Island, State of Illinois, do hereby certify that Jacob Morris, William Brooks, Jacob Starr, B. F. Barrett, Lemuel Andrews, Joseph Conway, and B. J. Cobb, are all citizens of the county of Rock Island, that they are men of respectability, and that full faith and credit is due to their testimony. I further certify that Lemuel Andrews is sheriff of said county, Jacob Starr is the coroner of said county, and Joseph Conway is clerk of the Circuit Court of the said county, and I further certify that the place of residence of said Lindsey is within four miles of the place where the above depositions were taken.

Given under my hand and seal this 13th day of April, A. D. 1846. MILES W. CONWAY, J. P. [SEAL.]

State of Illinois, County of Rock Island, *ss.*

I, William Vandever, Clerk of the County Commissioners' Court of Rock Island County, do hereby certify that Miles W. Conway, whose name appears signed to the foregoing certificate, was on the day and date thereof, an acting Justice of the Peace in and for said county, regularly commissioned and qualified, and as such full faith and credit are due to all his official acts.

In testimony whereof I have hereunto affixed the seal of said court, at Rock Island, this thirteenth day of April, A. D. 1846.

[L. S.] WM. VANDEVER, Clerk.

(Endorsed). Filed Dec. 25th, 1854.

WM. POPE, Clerk.
By J. T. MOULTON, D'y Cl'k.

Exhibit B.

General Land Office, September 6th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications from the township plats on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JOHN WILSON,
Commissioner of the General Land Office.

Fractional Township 18 N., Range 2 W. of 4th Pr. Meridian.

(For plat see original, page 82.)

T. 18 N., R. 2 W. of 4th Pl. Mdn.

(For plat see original, page 83.)

Endorsed: Filed Dec. 25, 1854.

WM. POPE, Clerk.
By J. T. MOULTON, Dy. Cl'k.

Exhibit C.

General Land Office, Sept. 13, 1854.

I, Chas. S. Frailey, Acting Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the patent records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] CHAS. S. FRAILEY,
Acting Commissioner of the General Land Office.

(Pre-emption Certificate No. 21,227.)

The United States of America, to all to whom these shall come, greeting:—

Whereas David Hawes, of Rock Island County, Illinois, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Dixon, whereby it appears that full payment has been made by the said David Hawes, according to the provisions of the act of Congress of the 24th of April,

No. 205- Lindsey vs Hawes - page 83

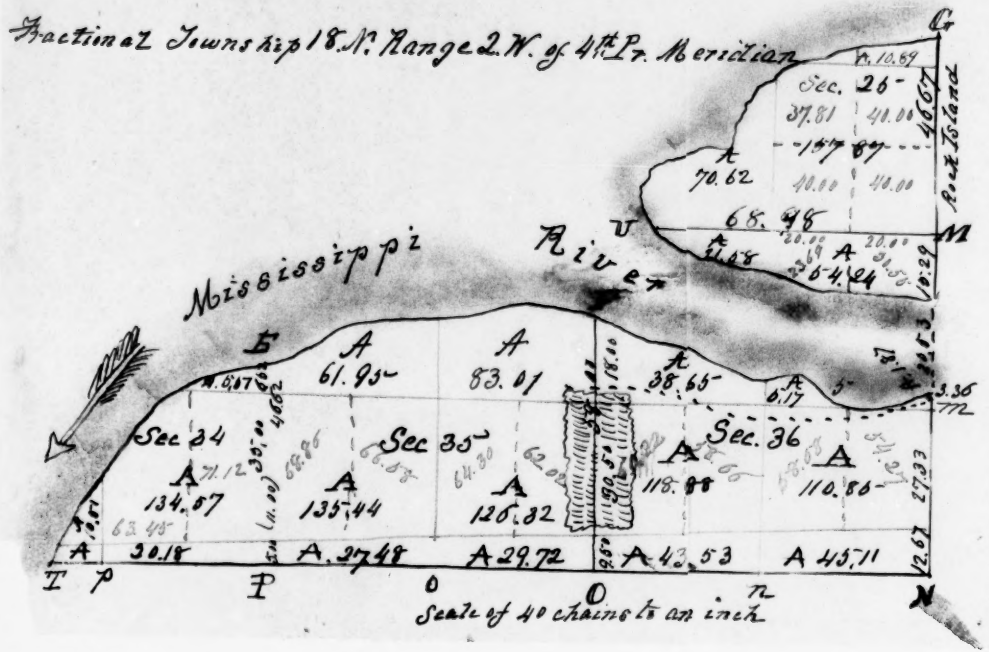
T. 18. N. R. 2. W. of 4th P. M. Mdn

Variation 7° 46' East.

Scale of 40 Chains to an inch.

(Resurvey)

Lindsey vs Hawes - page 82



1820, entitled "An act making further provision for the sale of the public lands," for the southwest part of the northeast fractional quarter of section thirty-six, in township eighteen of range two west, in the district of lands subject to sale at Dixon, Illinois, containing thirteen acres and twenty-three hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said David Hawes. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said David Hawes, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said David Hawes, and to his heirs and assigns forever.

In testimony whereof I, James K. Polk, President of the United [L. S.] States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of March, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second.

By the President, JAMES K. POLK,
By J. K. STEPHENS, Ass't Sc'y.
S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded vol. 38, page 431.

Endorsed: Filed Dec. 25, 1854.
WM. POPE, Clerk.
By J. T. MOULTON, Dep. Clerk.

Exhibit D.

General Land Office, Sept. 13th, 1854.

I, Chas. J. Frailey, acting commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the patent records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[L. S.] CHAS. J. FRAILEY,
Acting Commissioner of the General Land Office.

Certificate No. 8890.

The United States of America.

To all to whom these presents shall come, greeting:—

Whereas Isaac D. Corson, of Jo Daviess County, Illinois, has deposited in the General Land Office of the United States, a certificate of the register of the land office at Dixon, whereby it appears that full payment has been made by the said Isaac D. Corson according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southeast part of the northeast fractional quarter of section thirty-six, in township eighteen north, of range two west, in the district of lands subject to sale at Dixon, Illinois, containing six acres and nine hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Isaac D. Corson. Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Isaac D. Corson and his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereto belonging, unto the said Isaac D. Corson, and to his heirs and assigns forever.

In testimony whereof I, James K. Polk, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of March, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the seventieth.

[L. S.] By the President, JAMES K. POLK.
By J. KNOX WALKER, Sec'y.
S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded vol. 33, page 50.

Endorsed: Filed Dec. 25th, 1854.
WM. POPE, Clerk.
By J. T. MOULTON, Dep. Cl'k.

And afterwards, to wit, on the seventeenth day of April, in the year last aforesaid, came the Marshal of the Northern District of Illinois, and returned into the office of the Clerk of the Circuit Court of the United States for the said Northern District of Illinois, the writ of subpœna issued against the defendants in said entitled cause endorsed as follows, to wit:—

I hereby appoint E. M. Beardsley a deputy U. S. Marshal for the special purpose of serving the within subpœna, this 28th Feb., 1855. H. WILTON, U. S. Marshal.

I have executed this writ by giving a true copy and reading the original to each of the within named David Hawes, Jacob Norris, George M. Babcock, and David Barnes, this 9th day of March, A. D. 1855. H. WILTON, U. S. Marshal.
By E. M. BEARDSLEY, Special Deputy.

Whereupon said writ was endorsed by the clerk.
Filed April 17th, 1855. WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the first day of May, in the year last aforesaid, the following rule was entered of record in the rule book of said court in said entitled cause, to wit:—

In Vacation at Chambers.

AUGUSTINE A. LINDSEY, ADAM NOEL, and SUSAN NOEL his wife, *et al.*, vs. DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, and DAVID BARNES. } In Chancery.

On motion of the complainants, by their solicitors, Whitaker and Grant. It is ordered by the court that the rule be extended, within which the defendants are required to answer the complainants' bill, until the first Monday of June next.

And afterwards, to wit, on the seventh day of May, in the year last aforesaid, came the defendant, David Hawes, by Messrs. Higgins, Beckwith, and Strother, his solicitors, and entered his appearance in said court in said entitled cause, whereupon the same was entered of record in the rule book of said court, in the words and figures following, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL, and SUSAN NOEL his wife, JAMES LINDSEY, HORACE BRADLEY, ELEANOR M. BRADLEY his wife, *et al.*, vs. DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, and DAVID BARNES. } In Chancery.

This day came David Hawes, defendant in said cause, and by his solicitors, Higgins, Beckwith, and Strother, enters his appearance herein. WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the first day of June, in the year last aforesaid, came again the said defendant, David Hawes, by his said solicitors, and filed in the office of the clerk of said court his demurrer to the complainants' bill in said entitled cause, which said demurrer is in the words and figures following, to wit:—

United States of America, Circuit Court for the Northern District of Illinois, in Chancery.

The demurrer of David Hawes, one of the defendants, to the bill of complaint of Augustine A. Lindsey, a son of Thomas Lindsey, deceased, late of Rock Island County, State of Illinois; Susan Noel, a daughter, and Adam Noel, her husband; James Lindsey, a son, Eleanor M. Bradley, a daughter, and Horace Bradley, her husband; Margaret D. Matthews, a daughter, and John B. Matthews, her husband; and Joseph T. Lindsey, a son, heirs-at-law of said Thomas Lindsey, deceased, and of his deceased son, Andrew, and daughter, Sarah Ann, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainants have not, by their said bill, made such a case as entitles them, in a court of equity, to any discovery from this defendant, or to any relief against him as to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by this defendant, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the said complainants, for any of the purposes for which a discovery is sought against this defendant by the said bill, nor entitle the said complainants to any relief in this court, touching any of the matters therein complained of. Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto; and he prays the judgment of this honorable court, whether they or either of them shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained. DAVID HAWES.

Higgins, Beckwith, and Strother,
Solic's and of Counsel.

Having read the bill in the cause mentioned in the foregoing demurrer, I hereby certify that I am of opinion that said demurrer is well founded in point of law.

May 24, 1855.

UNITED STATES OF AMERICA.
Northern District of Illinois, *ss.*

In U. S. Circuit Court, Northern Dist. of Ills.

AUGUSTINE A. LINDSEY *et al.*
vs.
DAVID HAWES *et al.*
} In Chancery.

I, David Hawes, one of the defts. in the above entitled cause, testify and say that the foregoing demurrer is not interposed therein for the purpose of delay. DAVID HAWES.

Sworn and subscribed before me this 28th day of May, A. D. 1855.

IRA O. WILKINSON,
Judge 6th Jud. Cir. Illinois.

(Endorsed) Filed June 1st, 1855.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the fourth day of June, in the year last aforesaid, came the defendants, George M. Babcock, David Barnes and William Lear, by Messrs. Higgins, Beckwith and Strother, their solicitors, and entered their appearance in said court in said entitled cause, whereupon the same was entered of record in the rule book of said court in the words and figures following, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL and SUSAN NOEL his wife, JAMES LINDSEY, HORACE BRADLEY, *et al.*
vs.
DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK and DAVID BARNES, WILLIAM LEAR, *et al.*
} In Chancery.

This day come the defendants George M. Babcock, David Barnes and William Lear, By Higgins, Beckwith and Strother, their solicitors, and enter their appearance to the complainants' bill of complaint herein, as will appear by reference to the files.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on Monday the fifteenth day of October, in the year last aforesaid, in the October adjourned term, A. D. 1855, of said court, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, a son of THOMAS LINDSEY, SUSAN NOEL, *et al.*
vs.
DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK and DAVID BARNES.
} In Chancery.

On motion of the complainants by their solicitors, and with the assent of the defendants' solicitors, it is ordered and adjudged by the court that "the Chicago and Rock Island Railroad Company be made nominal defendants to the record herein.

And afterwards, to wit, on Wednesday the twenty-fourth day of October, in the year last aforesaid, in the said October adjourned term, A. D. 1855, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL,
SUSAN NOEL his wife, et al.,
vs.
DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, DAVID BARNES, et al.
} In Chancery.

Now at this day came on to be heard the demurrer of the defendant, David Hawes, heretofore filed by his attorney to the complainants' bill, and the arguments of counsel thereon having continued until the hour of adjournment, the further hearing of the same is postponed until to-morrow morning.

And afterwards, to wit, on Thursday the twenty-fifth day of October, in the year last aforesaid, in the said October adjourned term, A. D. 1855, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL, et al.,
vs.
DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, DAVID BARNES and CHICAGO & ROCK ISLAND RAILROAD CO.
} In Chancery.

Now at this day come again the complainants, and the defendant, David Hawes, by their respective solicitors, and after hearing the concluding arguments upon the demurrer of the said David Hawes to the bill of complaint of the complainants, the court not being now sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on Tuesday the third day of June, in the year of our Lord one thousand eight hundred and fifty-six, as yet of the May adjourned term, A. D. 1856, of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL,
SUSAN NOEL, et al.,
vs.
DAVID HAWES, JACOB NORRIS, et al.
} In Chancery.

The court having fully considered, and being now fully advised upon the demurrer of the defendant, David Hawes, heretofore filed by his attorney to the complainants' bill, overrules the same, with leave to said defendant to withdraw his demurrer and answer the complainants bill.

And afterwards, to wit, on the eleventh day of November, in the year last aforesaid, came again the said defendant, David Hawes, by his said solicitors, and filed in the office of the clerk of said Court his answer to the complainants' bill in said entitled cause, which said answer is in the words and figures following, to wit:—

In the Circuit Court of the United States, in and for the District of Illinois. To the term, A. D. 1856.

AUGUSTINE A. LINDSAY et al.
vs.
DAVID HAWES et al.

The answer of David Hawes, one of the defendants to the bill of complainant of Augustine A. Lindsay, Susan Noel and Adam Noel her husband, James Lindsay, Eleanor M. Bradley and Horace Bradley, Margaret D. Matthews and John B. Matthews and Joseph T. Lindsay, heirs at law of Thomas Lindsay, deceased, and of his deceased son and daughter, Andrew and Sarah Ann.

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith, that he admits it to be true that the complainants are the children and heirs at law of Thomas Lindsay, deceased.

And said defendant further answering says, that it may be true that Thomas Lindsay in the month of April, A. D. 1839, applied for a pre-emption certificate under the act of Congress, passed the 22d of June, A. D. 1838, of the land in said bill described; but this defendant denies that he, said Thomas Lindsay, was by law entitled to a pre-emption certificate or to any pre-emption right whatever to any part of the northeast quarter of said section thirty-six, and denies that he ever resided on said northeast quarter section No. thirty-six (36), in township No. eighteen (18) north, range two west of the 4th P. M., and said defendant denies that said Thomas Lindsay ever resided on said northeast fractional quarter section at any time, and avers that he did reside upon lost or unsurveyed ground within the lines that should have embraced the southeast quarter section, and upon ground that was where the Mississippi River was represented to run by the original United States survey, and that he said Thomas Lindsay had a house thereon and resided therein at the time of the pretended proof of pre-emption, and said defendant avers and states that even if the said proof mentioned in the said bill was satisfactory to the said Register and Receiver, and if they, said Register and Receiver, granted a certificate of pre-emption, allowing him, said Thomas Lindsay, to purchase a part of said northeast fractional quarter, that said allowance was not conclusive, and that the said entry and certificate of pre-emption were afterwards by the Commissioner of the General Land Office duly cancelled and set aside. That the ex parte affidavits and the said proof furnished to said Register and Receiver were not true, and were

founded upon a mistake as to the location of the lines subdividing said section No. thirty-six (36), and that in point of fact, although proof was made before the Register and Receiver that said Thomas Lindsay resided on the *northeast* quarter section, and by reason thereof, said Register and Receiver granted a certificate of pre-emption to said Thomas Lindsay. Yet in truth the said Thomas Lindsay at the time of making such proof, resided on the southeast quarter of said section, and never had at that time nor ever did since reside on the northeast fractional quarter of said section, and that he did not at the time reside on any lands belonging to the United States, unless the lands where he resided belonged to the United States by reason of the mistake in the survey of the government officers. But whether said Thomas Lindsay resided on government land or not, he never did at any time reside on the northeast fractional quarter section, and never had any right of pre-emption thereto, and that the said certificate of pre-emption was obtained by swearing to facts which were not *true*, and particularly by swearing to the residence of said Thomas Lindsay upon the said northeast quarter of said section, whereas in truth and in fact, said Lindsay at the time of such proof, resided on the southeast quarter of said section if the section lines thereof had been extended; and on lost or unsurveyed land if not extended, and said defendant Hawes says that the foregoing facts were brought before the said Commissioner by this defendant in a legal and proper manner, and that the said proof and affidavits of said Lindsay were impeached to the satisfaction of said Commissioner, and thereupon the proofs and allegations in opposition to the claim and entry of said Thomas Lindsay, and in favor of the pre-emption right of said Hawes the defendant herein, were returned to the District office of the Land District in which said land in controversy was situated, with instructions to call all the parties before the Register and Receiver for the purpose of inquiring into the matters aforesaid, with instructions to allow each party on due notice an opportunity of cross-examining the witnesses of the other; and each party to introduce proofs, and on the close of the investigation the Register and Receiver were instructed to decide the case upon the merits, subject only to an appeal to the Secretary of the Treasury of the United States, and such proceedings were thereupon had, that a decision was made by said Register and Receiver in favor of said Hawes, which has never been appealed from, or in any manner reversed or annulled, which this defendant insists is conclusive and binding, as well upon this court as all the world.

And this defendant further answering says, that by the act of June 22d, 1838, under which said Thomas Lindsay made his pretended proof of pre-emption, it is expressly provided "That if any person claiming the benefit of said law shall swear falsely in the premises, he shall forfeit the money which he may have paid for the land, and all right and title to said land.

This defendant further answering says, that he admits the death

of said Lindsay as charged in said complainants' bill, and he also admits that the petitioners are his heirs, as well as the intermarriages of the daughters to the several persons named as petitioners as in said bill is alleged. He also admits the citizenship as alleged.

And defendant admits the minority of petitioners except Susan at the time of the death of Thomas Lindsay, and that it may be true that petitioner's mother held possession or collected rent on said southwest part of said fractional northeast quarter of said section as alleged, but of this defendant is ignorant, and leaves petitioners to prove the same as they may be advised.

Defendant further answering admits that long after the land had been proclaimed for sale, which may have been done on the 4th day of June, A. D. 1839, as is alleged, and pre-emption claimants notified to prove up their pre-emptions before the said day of sale, Silas Reed addressed a letter as in said bill is alleged, the substance of which letter is not fully set forth in said bill, but is contained in the exhibit thereto annexed, to which reference is here made. But this defendant denies that said Thomas Lindsay or his heirs were legally prejudiced, either by the lapse of time or the letter of said Reed; and denies that said Lindsay or his heirs ever were entitled to a pre-emption on said northeast quarter section, and avers that even if he obtained a patent under his fraudulent proof that it would be void and inoperative, and that it certainly would be liable to be set aside.

Said defendant further answering says, that he admits that after the date of the 10th day of March, 1844; but whether receiving said letter alone or upon other testimony this defendant is not advised. Hon. James Whitcomb, then Commissioner of the General Land Office, by letter of March 31st, 1844, addressed to William Milbourne, then Surveyor General at Saint Louis, ordered a survey of said land on the ground of mistake; but this defendant insists that if no mistake had been made in the survey or in the meandering of the Mississippi River, that Thomas Lindsay never had any right of pre-emption to the northeast quarter of section nor any part thereof.

And said defendant further answering says, that it may be true that the Hon. Thomas H. Blake addressed a letter to the Hon. J. P. Hoge, advising him of the suspension of said entry by said Thomas Lindsay, but of this defendant is not advised, and leaves complainants to prove the same, as well as the fact whether said Blake addressed a letter to said Reed as in said bill is alleged.

And said defendant further answering says, that he admits that the Commissioner of the General Land Office ordered said Reed to appoint a deputy to resurvey said fractional quarter section, and that on the 21st day of September, A. D. 1844, he appointed Geo. B. Sargeant, Esq., to perform that service for the whole of said fractional section thirty-six.

And said defendant further answering admits, that on the 20th June, A. D. 1845, F. R. Conway, Surveyor General of Illinois and

Missouri, addressed a letter to the Hon. James Shield, inclosing a plat of the north fractional half (south of the Mississippi River) of said fractional section thirty-six, informing him that a similar plat had been sent to the Land Office at Dixon, a copy of which said plat is hereto annexed and prayed to be taken as a part hereof, and which is a true copy of the survey made by the government officers, and is, this defendant insists, conclusive upon said Lindsay's heirs and representatives.

Said defendant further answering says, that he admits that after the date of the 19th of March, A. D. 1844, but whether upon receiving said letter or upon other testimony this defendant is not advised, James Whitcomb, then Commissioner of the General Land Office, by letter of March 31st, A. D. 1844, addressed to Wm. Milborne, then Surveyor General at St. Louis, ordered a survey of said land on the ground of mistake.

And this defendant further answering says, that he denies that the Hon. James Shields, Commissioner of the General Land Office, without giving any notice to the heirs of Thomas Lindsay, without any affidavit being filed, and without any proper case being made out on appeal from the decision of the Register and Receiver, did suspend the entries in said bill named; but said defendant avers that it was done according to the usual practice of the government in such cases, and on a proper case being made, and according to law and the rules and regulations of the proper department of the government. And said defendant avers, that said acts of said Com. Shields were all legal and proper and not beyond the powers of said commissioner, and a copy of the letter of said Shields referred to in said bill is here referred to and prayed to be taken as a part hereof.

And this defendant further answering says, that by the acts of Congress, July 4th, 1836, full power and jurisdiction to correct errors and mistakes of the Register and Receiver in allowing illegal, and unwarranted, and improper entries and pre-emption certificates, are fully and completely given in the premises over the public lands of the U. S. by the laws of the United States to the Commissioner of the General Land Office, and that his determination and adjudication of questions of which he has such jurisdiction were and are final and conclusive.

Said defendant admits the minority of said petitioners, Sarah Ann, Thomas, and Augustine Lindsay, but he insists that said Brackett appeared as their attorney, and had authority so far as such infants could confer an authority, but whether he appeared or not, or had authority or not, that the subsequent adjudication by the land officers and the confirmation thereof by the proper department is final and conclusive as well upon said minors as upon said James Lindsey, who was of full age, and refused to appear and contest the said application of said David Hawes for a pre-emption, pretending that the Register and Receiver were prejudiced against him and friendly with said defendant Hawes.

And this defendant further answering says, he admits that the Land Officers at Dixon, to wit, the Register and Receiver, under the said instructions from said Shields as Commissioner of the General Land Office, heard the proof of said David Hawes as to his pre-emption right under the act of Congress, A. D. 1841, and allowed the pre-emption claim and granted to him a certificate thereof on the 13th December, A. D. 1845, and that a patent was issued to the said David Hawes on the first of March, A. D. 1848; and this defendant insists that such action of the Com. of the General Land Office, and the adjudication of the proper department by the laws then in force were final and conclusive of the right of said Hawes to said land, and were subject only to an appeal to the Secretary of the Treasury, and insists that the said Hawes was entitled to a pre-emption on the northeast quarter by reason of his residence and improvements on said quarter, and by reason of his having complied with the law entitling him to such pre-emption on said quarter section.

Said defendant further answering says, that he admits the several deeds of conveyance to have been made as set out in complainants' bill of complaint, and claims that of all said persons as well as this defendant are *bona fide* purchasers of said land in good faith, and that defendant Hawes or his vendees in said bill named who claimed under him have been in actual possession of said land under claim and color of title made in good faith for more than seven successive years, and that they claiming under such entry and pre-emption certificate and entry certificate, and said patent after it issued have during seven successive years continued in such possession, and paid all taxes legally assessed on said northeast quarter section, by means whereof and by force of the statute of Illinois, the said defendants and each of them became, were, and are the legal owners of the several tracts claimed and held by them, to the extent and according to the purport of their and each of their said paper titles, and said defendant here insists upon said statute and claims the benefit of the same in as full a manner as if he had specially pleaded the same.

And this defendant further answering says, that he admits the value of said property to exceed two thousand dollars, and says that himself and his grantors have made large and valuable improvements on said lands, costing from ten to twenty thousand dollars, consisting of extensive steam mills and other improvements.

And the defendant further answering says, that by reference to the exhibits filed by complainants and referred to by them, it clearly appears that the witnesses in the matter of Thomas Lindsay's proof before the register and receiver were mistaken in regard to the lines subdividing said section No. thirty-six (36), and this defendant insists that all of the exhibits referred to by the complainants in their said bill fail to show that the said officers exceeded their jurisdiction in the premises, and insists that said exhibits tend to show a rightful exercise of their powers and authority in the premises, and said de-

fendant insists that the patent issued to him is also evidence of the rightful exercise of the authority of said officers, and he admits the copy of the patent referred to in the complainants' bill to be a true copy of the original patent issued to him the said defendant, and he insists that the survey of said Sargeant is not only correct, but that it is conclusive, and avers that the same was ordered by the government in good faith, and made in good faith, and from the original field notes, and as near correct as it was possible to make the same.

This defendant further answering says, that it may be true that Thomas Lindsay caused a survey to be made by one Baxter, and that said Baxter located a part of the house on the northeast quarter of said section, but if true that the said Baxter was mistaken, and that the said house was not on the said northeast quarter, but was more than sixty feet distant and south of the south line of said northeast quarter to the best of this defendant's knowledge and belief, and that it so appears from the government survey made by said Sargeant to which complainants have referred.

And said defendant further answering says, that he admits that said Thomas Lindsay was allowed a pre-emption on the southwest part of the northeast quarter section only, and that his pre-emption was not cancelled and set aside until A. D. 1844; but he insists that said entry was unlawful and ought to have been cancelled, and it was only because the government officers were ignorant of the facts or it would have been cancelled at an earlier date; but he insists that the heirs of said Lindsay had no right to complain that the entry was not sooner cancelled, and that they were not prejudiced by it if, as they allege, their mother enjoyed the rents and profits of the same.

And said defendant further answering says, that he expressly denies that the Commissioner Blake of the said land office, without notice to Lindsay or his heirs, without notice to the land officers Hackelan and Dement, or their successors—without any affidavit or case properly made and presented, on a mere suggestion that there was an error in the meandering of Mississippi River (the word "Rock" River having been used by mistake instead of Mississippi River), suspended said entry of said Thomas Lindsey. But defendant insists that all of the actings and doings of said officer were legal and proper, and authorized by law and the usage and practice of the department and of the government; and said Hawes denies that the action of said register and receiver, in allowing said certificate, was final and conclusive upon the government, and insists that it was proper for said officers, and they were competent to suspend said entry where the same had been procured by false swearing to a settlement on the land, as well by the express terms of the Act of 1838, under which said proof was made, as by the act of July 4th, 1836, and by the uniform practice of the government for more than twenty years.

And said defendant Hawes in like manner insists, that the action of James Shields, as commissioner in the premises, were in like man-

ner legal and proper, and sanctioned not only by the laws of the United States, but the usage and practice of the government for more than twenty years.

And said defendant denies, that it was merely on the resurvey of said lands, which increased the quantity only, that said entry was cancelled; and avers that it was because the resurvey showed clearly that Thomas Lindsay's house was on the southwest quarter of said section, at the time he made his proof that he resided on the northeast quarter of said section; and because the said Thomas Lindsay had, by his ex parte proof, wrongfully and fraudulently, and by false swearing to facts that were untrue, obtained said pre-emption, and not for the causes in said bill alleged, only as is therein untruly stated.

And this defendant says, that he denies that any of the acts of the officers of the government were either illegal or void, either in ordering a resurvey, in cancelling the entry, or in allowing the entry in favor of said Hawes; and denies that the defendants are trustees for the heirs of Lindsey, or that they have any right whatever in the premises.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainants' bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DAVID HAWES.

The State of Illinois, Cook County.

I, David Hawes, being duly sworn, depose and say, that all the several matters and things which are stated in the foregoing answer, as from the information of others I believe to be true, and that all the several other matters and things therein set forth (therein set forth) are true in substance and in fact. DAVID HAWES.

Sworn to and subscribed before me this 8th day of November, 1856. Witness my hand and notarial seal.

[L. S.] JOHN W. MAGILL, Not. Pub.

Endorsed: Filed November 11th, 1856.

WM. H. BRADLEY, Clk.

And afterwards, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, came again the said complainants, by their solicitors, and filed in the office of the clerk of said court their replication to the answer of the

defendant David Hawes, heretofore filed in said entitled cause, which said replication is in the words and figures following, to wit:—

United States of America, Circuit Court for the District of Illinois.

AUGUSTINE A. LINDSEY et als.
vs.
DAVID HAWES et als.

The replication of Augustine A. Lindsey & als., complainants, to the answer of David Hawes, defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true.

All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

JAMES GRANT, Att'y for Plff'ts.

Endorsed: Filed Feb'y 24th, 1857.
WM. H. BRADLEY, Cl'k.

The exhibits and depositions filed by the complainants in said entitled cause, and given in evidence upon the hearing thereof are in the words and figures following, to wit:—

Pre-emption. Act, 1838. Duplicate.

No. 8460. Receiver's Office, Galena, Illinois, 3d June, 1839.

Received from Thomas Lindsay, of Rock Island County, Illinois, the sum of six dollars and 46¼, being in full payment for the south part of the northeast fractional quarter of section No. thirty-six, in township No. eighteen north of base line, of range No. two west of the 4th principal meridian, containing five acres and $\frac{17}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

$6\frac{46\frac{1}{4}}{100}$ JOHN DEMENT, Receiver.

Endorsed: Filed March 24th, 1858.
WM. H. BRADLEY, Cl'k.

Charles H. Stoddard, being produced, sworn, and examined on the part of the complainants, deposeth and saith:—

Int. 1st. What is your age, place of residence, and occupation?

Answer. My age is thirty-three years and upwards; I reside in

Rock Island County, Illinois; and my occupation is that of a surveyor and engineer.

Int. 2d. Do you know the parties to this suit; and if so, how long?

Answer. I know the parties to this suit, except the female plaintiffs; have known them for several years.

Int. 3d. If you state that your occupation is that of a surveyor and engineer, state how long you have been engaged in that business in Rock Island County, Illinois.

Answer. I have been engaged in the business of surveying and engineering for twelve years; in the county of Rock Island, and State of Illinois for the last seven years, part of the time as deputy county surveyor.

Int. 4th. Do you know the location of section 36, township 11 N., R. 2 west, in said county?

Answer. I do.

Int. 5th. Have you ever surveyed the said section or any part of it? What field notes did you have when you surveyed it? Did you survey the said section, and particularly the northeast fractional quarter, to ascertain their correctness? State whether the surveys of both Bennett and Sargent are or were not correct. State where the old house of Thomas Lindsay is placed on said section by the variation of the compass, according to Bennett's survey, beginning your course from the northeast corner of the southeast quarter of said section thirty-six; where is the said house placed by Sargent's variation. State whether or not you observed on the chimney of said house a notch or mark, and how far is said mark from the north side of the house?

Answer. I have surveyed the whole of said section which lies on the south side of the slough or south channel of the Mississippi river. I surveyed and examined the said section to test Bennett's survey on the 18th of May, 1855, and to test Sargent's survey on the 19th of May, 1855. I had copies of the field notes of Flack and Bean's survey up to the Indian boundary of Bennett's survey in 1833, and of Sargent's re-survey in 1844. I hereto attach the said field notes of Flack and Bean, and Bennett, marked Exhibit "A," and those of Sargent marked "B;" my own field notes and map of Bennett's survey marked Exhibit "C," and my own field notes and map of Sargent's survey marked Exhibit "D." Neither the survey of Bennett nor Sargent is exactly correct. I surveyed the whole of the section as I have stated, but my object was to test their accuracy on the northeast fractional quarter, which lies south of the Mississippi river. That portion of the section lying north of the south shore of the Mississippi river is on the island of Rock Island.

Sargent's survey is the most accurate of the two; Sargent and Bennett both make the same distance from the quarter section line or southeast corner of the northeast fractional quarter of section thirty-six to the river, and there is a difference of ten links from

the opposite quarter post on west line of section thirty-six, that is, from the southwest corner of northwest quarter of section 36 to the river, Sargent is ten links shorter. The line of Sargent meandering on the river does not close on the northeast corner. He lacked 1 chain and 32 hundredths of closing. I make it 1 chain and 18 hundredths. Sargent's survey gives the quantity more correctly than Bennett's; this was caused by his more careful meanders of the river. Bennett subdivided the township. The government lands are ordinarily first surveyed into townships of six miles square. Another surveyor then divides these townships into sections, and meanders the banks of navigable streams which pass through the townships. In the case of this section Bennet would begin his survey at the southeast corner of section 36, and run north 40 chains, set his half mile or quarter post, then note his reaching of the river, thence the width of river, and then 40 chains to north line of section, making 80 chains in all. Then he would go to the southwest corner of section 36, run north forty chains, set his half mile or quarter post, then to river, across the river 80 chains to N. W. cor. of sec. 36, giving distance of both banks, thence east 40 chains he sets temporary quarter post; then 40 chains to northeast corner of sec. 36, and as he might fall north or south of it correct back in this line, and set the quarter post on north line in a straight line with the northeast and northwest corners. He would then meander the shores of the river, beginning at either side. He, Bennett, began on the east side, and Sargent on the west of the section, for their meanders. No government surveyor ever surveys the east and west line from one quarter post to another—that is, the centre line of the section. Bennett's line of meanders in platting at the surveyor general's office runs a little south of the centre line of the section east and west, which he would not discover as he did not plat his own work. Bennett's want of quantity was owing to haste or carelessness in running his meanders. By Bennett's meanders there is in the northeast fractional quarter, south of the Mississippi, eight and $\frac{9}{100}$ acres. The plat makes it seven and four-hundredths acres. There are two fractional pieces. In my survey, one piece contains 1.85 ac., the other 6.24 acres. In Bennett's one contains 1.87 acres, the other 5.17. Sargent and Bennett did not run at the same variation of the needle.

Bennett's variation was 8 degrees. Sargent's, 7° 46′ ($7\frac{3}{4}$). I followed each surveyor's variation in testing each survey. By running a line on Bennett's variation, 8° from the southeast corner of northeast fractional quarter of section thirty-six, south of the slough, it will throw a part of Lindsay's house, and all of the stable, on the northeast fractional quarter of section 36, as that stable is shown in Sargent's survey; the stable is now gone, the house is there. By Sargent's variation, they will both be thrown south of the northeast quarter, and on the southeast quarter. I noticed a notch cut into

one of the stones of the chimney of Lindsay's house; but when, or for what purpose it was made, I cannot say.

Int. 6th. State whether or not you took great pains to make your survey accurate, and whether it is possible, with ordinary instruments, such as are used in surveying government lands, to make two surveys of the same land alike. Furnish maps and plans of your surveys, if you have not done so already.

Answer. I took great pains to make my examination of the surveys of Sargent and Bennett correct, and spent a whole day on each survey.

I do not believe it possible, with ordinary instruments, such as are used in government surveys, to make two surveys of the same land alike. I have already furnished maps of all these surveys, and my own.

C. H. STODDARD.

Lewis C. Underwood, a witness named in said commission, was, at the same place, produced, sworn, and examined; and, upon his oath, deposeth and says, in answer to the

First Interrogatory. What is your age, place of residence, and occupation?

Answer. I am fifty-four years old. I reside in Whiteside County, Illinois, and am a farmer.

Second Int. Do you know the parties to this suit; and, if so, how long?

Answer. I do know them; have known the plaintiffs since the year 1835, and the defendants for several years.

Third Int. Did you know the late Thomas Lindsay, of Rock Island County, Illinois; and if so, how long?

Answer. I first came to Rock Island County in 1834. Thomas Lindsay came in 1835, and resided on the northeast fractional quarter of section thirty-six, in township eighteen north, range two west. I became acquainted with him then, and I knew him till his death.

Fourth Int. Do you know anything about his application for, and his obtaining a, pre-emption to the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west of the 4th P. M., in Rock Island County, Illinois? How near did you reside to Thomas Lindsay, from 1835, to the time of his death in 1839?

Answer. I resided on the adjoining quarter to Thomas Lindsay, on the east. The southwest corner of my land was the southeast corner of Lindsay's land. I know that he applied for and obtained a pre-emption on the southwest part of the northeast quarter of section thirty-six aforesaid.

Fifth Int. State whether or not you were one of his witnesses to prove the facts of his settlement and cultivation on said tract of land. If you were, state what you know of his settlement and cultivation on said tract of land; state the facts minutely.

Answer. I was one of the witnesses to prove the facts of his

settlement and cultivation. He applied for a pre-emption to the whole of the northeast fractional quarter of section thirty-six, in township eighteen north, range two west, in Rock Island County, Illinois. The annexed map, marked Exhibit "E," will show the position of the northeast fractional quarter of section thirty-six, township eighteen north, range two west of the fourth principal meridian. The quarter is made fractional by the south channel or slough of the Mississippi river. Lindsay claimed a pre-emption to the whole quarter, but was allowed a pre-emption to the southwest part of said quarter, because nearly all the balance of it was on the island of Rock Island.

Thomas Lindsay went upon this quarter section of land in 1835. He then built a dwelling-house which, according to Bennett's survey, was partly on the northeast fractional quarter of said section, a stable, which was all on the northeast fractional quarter, and inclosed a field with a rail fence of four or five acres, in one part of which was a potato patch of half an acre separated from the rest; this field was all on the southwest part of said northeast fractional quarter. I have marked the places for this field, house, and stable, on map hereto annexed, marked Exhibit "E." Thomas Lindsay lived in this house from the 1835 to 1839, in the latter part of which year after harvest he went to Iowa, I think, and died soon after. He was the head of a family from the time he came to the country until he died. In each year from 1835 to 1839, Lindsay occupied and cultivated this field, and he did everything that was required by the pre-emption act to comply with its provisions; his settlement and cultivation was continued without interruption from 1835 until the fall of 1839. I was called upon and gave evidence of the facts of settlement and cultivation when Lindsay proved his pre-emption. I resided on the adjoining tract of land. His pre-emption was proved under the act of 1838. I came to my farm the summer after Bennett surveyed these lands in the winter, and the landmarks were all fresh and visible.

Sixth Int. Did you, or other persons, use any means, and if so, what means, to ascertain the position of his house on the said tract of land? Was any surveyor employed or present, who was he, and what has become of him? If a compass was used, what variation was followed, and who looked through the compass, and where was his house and stable located as to the southwest part of said fractional quarter section?

Answer. Before Thomas Lindsay applied for his pre-emption he employed the then county surveyor Harvey or Baxter, Harvey I think, but no matter, both of them are now dead, to run out his lines, and I was present when the survey was made. The surveyor used a compass, and he had Bennett's field notes; I do not know what variations he used. He went to the southeast corner of northeast fractional quarter of said section thirty-six (36). The house in which Thomas Lindsay lived was and is in plain sight from this corner; the corner

was then well marked. The surveyor fixed his compass, and he and several of us looked through it; it placed a part of Thomas Lindsay's dwelling-house, all his stable and all of his field on said northeast fractional quarter south of the river. I looked through the compass and saw where it struck Lindsay's chimney, and we took an axe and (and) marked on the chimney (which is of stone and outside the house) the place where the line struck the chimney of the house. This line would pass not quite through the centre of the house, throwing the smallest half on the northeast fractional quarter.

LEWIS C. UNDERWOOD.

Exhibit "A."

Tp. 18 North, Range 2 West of 4th P'l Md'n.

(For plat marked Exhibit "A," see original, page 135.)

Field notes of survey by Flack & Bean in 1821, along the east [north chains 12.67] side of section 36, T. 18 N., R. 2 W. of the 4th p'l md'n.

Intersected Indian boundary line 34.23 links east of corner, where set a post corner of fract'l tp. 18 and 18, R. 1 and 2 W., and of fract. sec. 31 and 36, from which a W. oak 20 in. dia. brs. S. 54° W. 53 lks. Land rolling and rich timber, oak, elm, lynn, and undergrowth same.

[West 40.00] Along the south side of section 36, T. 18 N., R. 2 W. set ¼ section post from which an elm 14 in. dia. brs. N. 34° W. [59.60, 80.00] 39 links distant. A brook 5 links wide runs north. Set a post corner of sec. 35 and 36 from which a lynn 20 in. dia. brs. N. 8° W. 53 lks. and a W. oak 10 bears S. 5° W. 55 lks. Land rolling, rich; timber, oak, hickory, elm, lynn, walnut, &c.; undergr. vines, &c.

[North 9.50] Between Sec's 35 and 36, T. 18 N., R. 2 W., set a post on Indian boundary line corner of sec. 35 and 36, from which a B. walnut 24 in. dia. brs. N. 85° E. 39 lks., and a locust 18 brs. S. 78° W. 132 lks. Land very rolling, rich sumach undergr.

Field notes of survey by Chas. R. Bennett, in 1833, variation 8° E.

Run from the corner of sec. 1, 6, 31, and 36, t'ps 18 and 18, 17 and 17 N., R. 1 and 2 W. of 4th pl. md'n, on range line to Indian boundary line, for the purpose of ascertaining the variation of said line. I found it to be 8° E. The true variation at this time, as ascertained by polar observation, is 8° 20′ E. Therefore to run correctly with this line as run formerly from tp. line to Indian boundary line, run the continuation of said line north at the variation of 8° E., having found the trees noted as witness trees at the corner on Indian bound'y line, viz., a W. oak 28 in. dia. brs. S. 13° W. 53 lks., and a W. oak 18 bears N. 33° E. 59 lks. The distance from tp. corner [North] being 12.67 links run from said corner on Indian bound'y

line as surveyed by Flack & Bean on the east boundary of section [25.00, 40.00] 36, T. 18 N., R. 2 W., enter bottom.

Set ¼ section corner post from which a white oak 36 in. dia. brs. S. 6° W. 65 lks., and a white oak 24 bears N. 52° W. 196 lks. distant. Land, until you enter river bottom at , broken, yet rich, the bottom land very good and very rich, excellent to cultivate; timber white, red, and black oak, hickory, walnut, and elm; undergrowth hazel, briars, and vines; road running east from Rock Island to Ga- [40.75, 43.36] lena. Intersect the slough on south channel of Mississippi River dividing the main land from Rock Island, set post for corner to fract'l section 36, T. 18 N., R. 2 W., from which a white oak 24 in. dia. brs. S. 65° W. 76 lks., and a black oak 10 bears N. 56° E. 52 lks. distant. Land of this fraction 1st quality, excellent for cultivation, with a few oaks and undergr. of hazel, briars, and vines.

October 16, 1833.

[North] Continuation of range line of range 1 and 2 W., T. 18 N., from S. E. bank of slough to Rock Island 43.36, from tp. corner of sec. 31 and 36, 1 and 6, tp's 17 and 17, 18 and 18 N., R. 1 and 2 W., distance across slough to S. E. bank of Rock Island 20.35 chains, plus 43.36 make to S. E. bank of Rock Island, set [63.71] post for fract'l section corner of 31, T. 18 N., R. 1 W., and section 36, T. 18 N., R. 2 W., from which a hickory 10 in. dia. brs. N. 74° W. 14 lks., and a black oak 6 brs. N. 49° E. 52 lks. distant.

[80.00] Set post on Island for corner to sec's 25 and 36, T. 18 N., R. 2 W., from which a burr oak 6 in. dia. brs. N. 25° W. 94 lks., and a burr oak 4 bears S. 65° W. 28 lks. distant. Land fit for cultivation, level and rich; timber, oak, lynn, elm, and hickory; undergr. hazel, briars, crab-apple, willow, &c.

October 22, 1833.

[North] Between sec's 35 and 36, T. 18 N., R. 2 W., from corner on Indian boundary line, 950 lks. distant from township corner, with considerable difficulty and running on Indian boundary line from corner of fract'l section 36 and on tp. line, also measuring from tp. corner to the corner of sec's 35 and 36, then north 9.50 lks. distant from said corner of sec's 35 and 36, T. 18 N., R. 2. W., and found a walnut stump about 24 in. dia., and also a locust stump about 18 in. dia., the bearing and distances agreeing with the bearing and distances given, and also finding some marks on same. I set post and raised mound for corner to fract'l sec's 35 and 36, T. 18 N., R. 2 W., and run north.

[9.55] Enter field of Mr. Chase, containing about 50 acres, the field being principally to the west of line—a field belonging to Geo. Davenport, of about 80 acres, lying to the east.

[40.00] Set a limestone rock for ¼ section corner the description as follows: a lime stone rock about 8 inches square tapering somewhat towards the end, placed in the ground, 20 inches in length, half the length imbedded in the earth, and placed with the corners to

wards the cardinal points. Land 1st rate soil, very rich and excellent for cultivation, covered with corn stocks and wheat stubble. [44.55] Leave field of Mr. Chase and crossed road from Venus to Rock Island course east.

[55.50] House of Mr. Chase, built of log, size about 16 feet by 20. [58.00] Intersect the east on left bank of the Mississippi River, set large limestone rock of triangular shape, one side about 14 inches and the other two sides about 12 inches broad and 3 feet in length, for corner on river to fract'l sec's 35 and 36, T. 18 N., R. 2 W.; said rock was placed with the broad side towards the river or north, and the corners towards the E. W. and S. Land of this fraction of quality, excellent for cultivation; undergr. cornstocks, stubble and weeds, Octob. 17, 1833. On the N. bound'y of sec. 36, T. 18 N., R. 2 W., variation 8 E; then run down stream with the meanders of the Mississippi River on left or east bank of the same, S. 76° W. 2.00 chs., S. 72° W. 12.00 chs., N. 89° W. 4.50 chs., N. 81° W. 6.00 chs., N. 67° W. 2.50 chs., to the mouth of spring branch 5 lks. wide from S. E., N. 67° W. 1.50 chs., N. 10° W. 2.50 chs., N. 62° W. 5.50 chs., N. 86° W. 1.50 chs., S. 81° W. 5.50 chs., N. 81° W. 9.50 chs., N. 63° W. 3.50 chs., to spring near Mr. Barrel's house, N. 63° W. 3.00 chs., to Mr. Barrel's residence, N. 68° W. 2.00 chs., to ferry across to Rock Island, N. 68° W. 1.50 chs., N. 77° W. 5.00 chs., N. 68° W. 18.21 chs., to the corner of fract'l Sec's 35 and 36, T. 18, N. R. 2 W. on the left bank of the Mississippi River. Land good, rich bottom, fit for cultivation [West chains 40.00] on true line between sec's 25 and 36, T. 18 N., R. 2 W. Set ¼ section corner post from which a black oak 8 in. dia'r brs. N. 29° E. 133 lks., and a haw 8, bears S. 13° W. 1.35 lks. distant. Land fine for cultivation; timber, small oak and hickory; underg'r, hazel, briars and vines.

[41.43] Enter field belonging to the fort of about 10 acres, line passes through the middle.

[63.63] Recrossed or left same.

[68.98] Intersect Mississippi River at the west or lower end of Rock Island, set limestone rock 18 inches in length and 10 inches square, the corners placed towards the cardinal points, and inserted 9 inches in the ground, and bearing N. 30° W. of the Commandant's house within the fort, and 12.03 links distant therefrom for corner to fract'l sec's 25 and 36 on Rock Island, T. 18 N., R. 2 W. Land fine, rich and level, fit for cultivation.

(Note.—According to my recollection, which is corroborated by the notes of meanders, the commandant's house within the fort bears N. 30° W. from this corner on the Mississippi, and is not situated as here stated. CHS. R. BENNETT, D. S.)

From corner on range line of fract'l sec's 31 and 36, T. 18 N., R. 1 and 2 W., down stream along fract'l section 36, T. 18 N., R. 2 W., as follows:—

N. 88° W. 8.00 chs., N. 77° W. 9.00 chs., N. 86° W. 14.00 chs., N. 45° W. 4.50 chs., N. 81° W. 28.50 chs., N. 48° W. 8.50 chs., N. 83° W. 1.32 chs., to the place of corner to fract'l sec's 25 and 36, T. 18 N., R. 2 W. of the 4th principal meridian. Land good, soil rich, fit for cultivation, but little timber of oak, hickory, elm and some sycamore; undergr. hazel, crab-apple, briars, vines, &c. Oct 24, 1833.

Office of the Surveyor General for Illinois and Mo.
St. Louis, 18 August, 1854.

The foregoing plat and the field notes of sec. 36 in T. 18 north, range 2 west of the 4th p'l meridian, are correctly copied from the plats and books in this office. The said section was surveyed in 1833 under the joint contract of Chas. R. Bennett and L. H. Bowen, of 20 August, 1833.

JNO. LOUGHBOROUGH, Surveyor General.

Tp. 18 N., R. 5 W. of 4th pl. mdn.

Exhibit "B."

(For plat marked Exhibit "B" see original, page 143.)

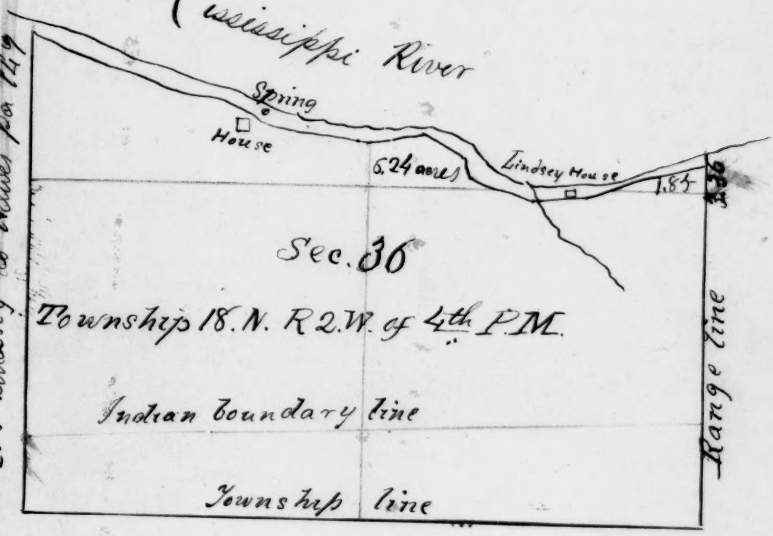
Field-Notes of Surveys by George B. Sargent, D. S., in 1844.

Copy of the field-notes of the survey of the E. and W. quarter section line, and the line between the N. E. and N. W. fract'l quarters of fract'l section 36 (south of the Mississippi River), in Tp. 18 N., R. 2 W. 4th pl. mdn; also the resurvey of the meanders of the left bank of the river, along said fract'l section, and the remeasurement of its west boundary, as executed by George B. Sargent, on the 22d of October, 1844, under instructions of the 21st of September of the same year. Edw. H. Gibbon and Nat. Johnson, chain-carriers; James Lindsay, flagman and axeman; all of whom were sworn by the said Geo. B. Sargent, deputy surveyor, on the 22d of October, 1844. Measuring chain compared with standard chain, and found to be correct.

The witness trees at the corner to secs. 35 and 36, on the south boundary of the tp., are destroyed. I find the corner by the stumps (nearly decayed), viz: White oak S. 5° W. 55, Lynn N. 8° W. 53 lks. I re-establish this corner by setting post, from which a w. oak 22 in. diam. brs. N. 60° W. 216 links distant, no other tree near. Then from said corner, with my compass adjusted at a variation of 8° east, I run north 5.50 chs., foot of bluff; 7.50 chs., cross branch, 6 lks. wide, runs west; 39.88 ch., fall 17 lks. west of ¼ section corner. (There is no vestige of the corner called for at 9.50 chs.) Therefore, to run parallel to said west boundary of section 36, T. 18 N., R. 2 W., I adjust my compass to an assumed variation of 7° 46′ E., which is 14′ less than the given variation, and from said ¼ section corner I run on a random line.

[East, chains 1.25] Enter a field fence bearing N. and S., and another fence nearly parallel to line, about 100 links south.

Exhibit "C"


Mississippi River
Spring
House
5.24 acres
Lindsey House
1.84
36
Sec. 36
Township 18. N. R 2. W. of 4th P.M.
Indian boundary line
Township line
Range line
NE/4 Lindsey House for 1/4

[39.80] Leave field.
[40.00] Set a temporary ¼ section post.
[55.00] Cross road leading from Stephenson to Moline.
[60.00] Set a temporary post.
[64.00] River bank; continue along said bank.
[74.50] Leave bank of river.
[79.00] Fall 197 links north of the ¼ section corner on east boundary of township, as found by the witness trees, viz: W. oak 24 N. 52° W. 196 lks., stump of white oak 36 S. 6° W. 65 lks., the corner is in the middle of the road. I therefore set a sandstone, 20 inches long, 8 inches wide, and 8 inches thick, 17 inches in the ground, from which a pin oak 6 in. dia'r brs. S. 58½° W. links.

[West, chains 17.25] On a true line from said corner. The N. W. corner of Lindsay's house from this point bears S. 60° E. 105 lks.; the N. E. corner of his stable bears south 33 links distant.

[19.25] Set a post for corner to the legal subdivision, from which a white oak 12 in. dia'r bears N. 26¾° W. 154 links distant; no other tree convenient. Land level; young growth of pin and burr oaks.

[North] From above described corner I run with my compass adjusted at an east variation of 7° 46′.

[0.50] Cross road from Stephenson to Moline.

[4.46] Intersect the left and south bank of Mississippi River, and set a post, from which a maple 8 in. dia'r brs. S. 85° W. 54 links distant.

From the corner last established, on the true line, I run—

[West] On a true line, counting the distance from the beginning thereof.

[39.50.] Set a post for ¼ section corner, from which an elm 8 in. dia. brs. S. 62½° E. 79 lks. distant, no other trees convenient.

Then from said corner I run

[North 3.50.] Cross-road leading from Stephenson to Moline; [6.50.] an elm 10 in. dia., from which a basswood 18 in. dia. brs. west 3 lks.

The limestone corner called for on the bank of the river has been removed. I therefore proceed to re-establish it, by commencing at the ¼ section corner on west bound'y of section 36, and with compass adjusted at a variation of 7° 46′ E. run north on true line, at 17.90 chs. intersect left and south bank of Mississippi river, and set a limestone 12 inches long, 12 inches wide and 9 inches thick, as corner to fract. secs. 35 and 36, T. 18 N., R. 2 W.

Thence from said corner up stream with the meanders along fract. section 36,

S. 72½° E. 19.15 chains.
S. 70 E. 13.50 "
S. 77½ E. 8.60 " to corner of legal subdivision on bank of river.
N. 86 E. 9.42 chains.

N. 70½ E. 2.18 chains.
S. 76 E. 3.04 chains.
S. 64 E. 6.20 " to corner of legal subdivision on bank of river.
S. 42 E. 2.36 "
S. 69 E. 5.18 "
N. 80 E. 2.96 "
N. 81 E. 3.62 "
N. 70 E. 5.70 "
S. 77 E. 1.32 " to the corner of fract. secs. 31 and 36, T. 18 N., R. 1 and 2 W., on left and south of Mississippi River.

(Signed) EDW. K. GIBBON,
NAT. JOHNSON,
JAMES LINDSAY.

I have examined the bank along section 36 particularly, and state it as my opinion that there has been no accretion, and very little if any decretion, of the river bank, since the old survey was executed.

(Signed) GEO. B. SARGENT, D. S.

October 22d, 1844.

Surveyor's Office, St. Louis, June 20th, 1845.

The foregoing notes on pages 1, 2 and 3, of the surveys therein designated, have been compared with the original field notes of the same surveys returned to this office, and found to be correctly copied. The copy is adopted in lieu of the original, and the surveys therein mentioned are hereby approved.

(Signed) F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Office of the Surveyor General for Illinois and Missouri.
St. Louis, 18th August, 1854.

The foregoing plat and the notes of section 36 (north of the Indian line and south of river), township 18 north, range 2 west of the 4th principal meridian, and of the approval of the survey thereof, are correctly copied from the plats and books in this office. The said section was resurveyed in part (the northern half) by Geo. B. Sargent, in October, 1844, under instructions of the 21st September of same year, on account of errors in the former survey of 1833.

JNO. LOUGHBOROUGH, Surveyor General.

Exhibit C.

(For plat marked Exhibit C, see original page 149.)

The above is a correct plat of a survey which I made on the 18th day of May, 1855. I commenced at the N. E. corner of the S. E. ¼ sec. 36, T. 18, 2 W. of 4th P. M., as found by the stumps of the witness trees called for in the government field notes, and run north (with a variation of needle of 8°) 3 chs. 36 lks. intersect corner on

No 205 Lindsey vs Hawes pa. 143

Tp. 18 N. R. 2 W. of 4th pl: Mdn

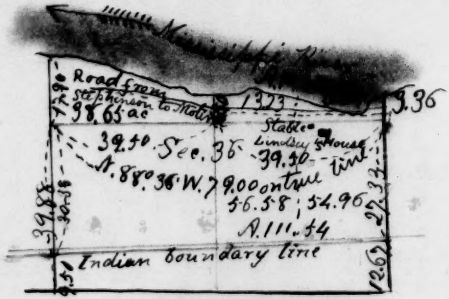


Exhibit "B."

Variation 7°46' E.

Scale of 40 chains to an inch.

bank of river, as found by stumps of witness trees called for in field notes. Thence with the meanders of the river (as described in the field notes of Flack and Bean) down stream S. 76° W. 2.00 chs. S. 72° W. 12 chs. N. 89° W. (2.30 chs. fall 42 lks. south of the Lindsey house) 4.50 chs. N. 81° W. (1.50 cross creek) 6.00 chs. N. 67° W. 4.00 chs. N. 10° W. 2.50 chs. N. 62° W. 5.50 chs. N. 86° W. 1.50 chs. S. 81° W. 5.50 chs. N. 81° W. 9.50 chs. N. 63° W. (3 chs. fall 30 lks. S. of spring, 3.00 chs. fall 97 lks. N. of Barret's house) 6.50 chs. N. 68° W. 3.50 chs. N. 77° W. 5.00 chs. N. 68° W. 17.75 fall 13 lks. S. of corner of fractional secs. 35 and 36, on bank of river.

A line run from the N. E. corner of the S. E. qr. sec. 36, with a variation of needle of 8° E. (being the same variation as the range line is run N. & S.) west through the centre of sec. 36, will intersect the Lindsey house about 2 feet S. of the north side of it.

C. H. STODDARD, Surveyor.

Exhibit "D."

(For plat marked Exhibit "D," see original, page 151.)

The above is a correct plat of a survey which I made May 19th, 1855; I commenced at the N. W. corner of fractional section 36, in township 18 N., R. 2 west, as found by a stone planted on bank of Mississippi River, and run the meanders of the river up stream according to the field notes of George B. Sargent, Deputy Survey, with a variation of needle of 7¾°, to wit:—

S. 72½° E. 19.15 chs.
S. 70° E. 13.50 "
S. 77½° E. 8.60 " from this point I measured south 6.50 chs. intersected the corner in centre of sec. 36, as established by Geo. B. Sargent.

N. 86° E. 9.42 chs, N. 70½° E. 2.18 chs, S. 76° E. 3.04 chs, S. 64° E. 6.20 chs, made offset 75 lks. south to avoid the river, S. 42° E. 2.36 chs, S. 69° E. 5.18 chs, N. 80° E. 2.96 chs, N. 81° E. 3.62 chs, N. 70° E. 5.70 chs, S. 77° E. 1.03 chs, instead of 1.32 as field notes state, fall 1.18 lks. north of corner including offset.

C. H. STODDARD,
Surveyor.

Exhibit "E."

(For plat marked Exhibit "E," see original, page 152.)

I, John N. Crawford, Commissioner named in the foregoing commission, do certify that in pursuance of the annexed commission and notice, came before me at Rock Island, in the county of Rock Island and State of Illinois, Charles H. Stoddard and Lewis C. Underwood, who were there by me sworn and examined, and such examination reduced to writing by me, who is neither of the parties, their attorney, or in anywise interested in the event of the suit, and

subscribed by said witnesses respectively in my presence, and their said depositions are now herewith returned.

Given under my hand at Rock Island, in the county of Rock Island and State of Illinois, this 28th day of March, A. D. 1857.

JOHN N. CRAWFORD, [SEAL.]
Commissioner.

(Endorsed): Filed April 2d, 1857.

WM. H. BRADLEY, Clerk.

Abraham Hartzel, a witness produced, cautioned and sworn in the above cause, testifies as follows in answer to the following interrogatories, to wit:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Answer. My age is forty-nine. I reside at present in Moline, Rock Island County. I am by occupation a mason and bricklayer. In the year of 1836 I resided in the village of Stephenson (now known as City of Rock Island), for a few months during the summer season. In the fall of that year I moved out into the Rock River Bottom, about three miles south from Moline, and resided there until 1841.

Int'y 2d. Do you know the parties to this controversy?

Answ. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime? and if so, how long? and do you know where he lived from the year 1835 to the spring of 1839?

Answ. I knew Mr. Lindsay, the old gentleman; his name was Thomas, I believe. My acquaintance with him commenced in the year 1835; in April of that year I think I first saw him. I knew him and saw him off and on until about 1838 or '39, all the while that he lived here in this neighborhood. I have no recollection of seeing him after he moved over into Iowa. From 1835 to '39, and all the time that I knew him, he lived in the old house just above Barnes' mill, on the south side of the road. I do not know the numbers of the land.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you do not know the numbers, state if you know the locality.

Answ. I do not know that land by the numbers. The land in controversy I know is that which Mr. Barnes now occupies. I do not know that that is the land which you describe by numbers, but I do know it by its located.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit "A." State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years if you can remember, and what crops

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Exhibit "C"

were grown thereon. Point out on the map or name what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Answ. Well, my recollection serves me full well to say that there was a lot fenced, cultivated in a variety of vegetables. I will venture to say that it was over an acre in size. I have a recollection of a yard which was fenced off for the use of cattle. It is not positive in my mind when this cultivation was there, but I will say safely in 1838 and 1839. I recollect of potatoes and turnips, and I think I have seen pumpkins growing there. I guess I would have no hesitation in saying that I saw flax growing on that lot up there. This cultivation, I should say from my recollection, was west of Lindsay's house, and north of the then travelled road, and running down towards the river, couldn't say whether to it or not. Its western extremity was, I should judge by this map, near the letter (b) (witness here marks on the map), and extended east towards the house (if this map be correct) across the dotted line here represented running north and south. West of the stable the fence came pretty near up to the road, I should think. East of this cultivation was the cattle-yard, of which I have spoken.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Ans'r. My business led me to town very frequently; living out of town on my farm and doing a good deal of work in the village, I passed back and forth on the road running by Lindsay's house quite often for a long time, once or twice a week, or more frequently than that.

On one occasion, coming down with a neighbor, I believe it was Joel Wells, who is now dead; passing this lot, I remarked to him that it was singular men would cultivate land which did not produce better than that seemed to; there being so much of better in the country. Wells answered that it was not for the crop; that the lot was Lindsay's, and that he had made a pre-emption claim to it; this fastened the matter in my mind more particularly than anything else.

Cross-exam'tn.

X-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5, is a correct representation of the lines of that quarter sec-

tion, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Ans'r. I have answered only from my general knowledge of the locality, that it is the land in dispute. I do not know where the true boundary line of this quarter section, or of the fraction in dispute runs. I never saw the line run; never was on the land when it was being surveyed.

I do not know whether the map referred to in interrogatory 5 is correctly drawn or not; I can't say anything about its correctness no way. I don't know whether the house and stable are correctly located in respect to the lines.

The field, as I have marked it, is correct with reference to the road, but I know nothing about the lines. I never knew as to the lines.

X-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answ. The house as represented in this map (map marked "B," and attached, now shown to witness) is correctly placed, I think, with respect to the road; it was south of the road as then travelled. Whether the stable is correctly placed, I can't say positively; there was a cattle yard on the north side of the road, and I think I remember a stable at the east end of it. The field of which I have spoken was situated somewhere near (b) as marked on map (witness here marks on map), taking that as about the centre of it. Whether the house or field are correctly represented here with respect to the lines as surveyed by Mr. Sargent, I don't know. I know nothing about where the lines of that or any other survey run.

X-int'y 3d. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned?

The true question you are asked to answer is, whether the house and field occupied by Lindsay, were on this particular quarter section now in dispute, according to the true lines. State which of these two maps is the true and correct one, and lays down the correct lines. And give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Answ. I have passed over the land in dispute lately, have not examined it particularly with reference to the lines. I cannot swear that the house was on this quarter (Thos. Lindsay's house), or that any portion of this quarter was in cultivation in 1838 and 1839, by Thos. Lindsay.

I knew nothing about the lines. I never knew where the true lines ran. I never saw the land surveyed. I do not know which

of the two maps which have been shown me is the correct one; they cannot both be correct, but I have no means of determining as to the matter. Allowing the map of Sargent's survey, here shown me, to be correct, the house will be south of the south line of this quarter section, and I am safe in saying that the larger portion of the cultivated field lay north of that line.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvements and cultivation, state also what fact or circumstance enables you to swear that the house, improvements, and cultivation, were on the N. E. frac. quarter of sect. 36. Did you then, or do you now, know where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answ. I do not know whether I could swear positively that Lindsay's house or his improvements were on the N. E. quarter of sec. 36; as I have said before, I swear from my general knowledge of the land in dispute in this controversy. I never was informed by any one as to where the lines ran which bound this land, and never made any examination as to it, except of the maps here shown to me.

Cross-int'y 5th. Did not Thomas Lindsay rent and cultivate a field of Davenport's—an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew and now know the lines.

Answ. Thos. Lindsay may have rented land of Davenport; I know nothing about it. I have no recollection of any other ground which he cultivated than the small lot which I have spoken of, and marked on the map. I think he had a small garden patch near the house in which he lived, but can't say certain.

Cross-int'y 6th. Did not Thomas Lindsay claim a pre-emption on another quarter section, by reason and on account of this same house and cultivation referred to? State all you know about it.

Answ. I do not think I have anything to say from Mr. Lindsay. I think I did hear from others such a report. I understood that they improved for the purpose of holding the lot south of the road, and on which the house stood.

X-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter *owned* and cultivated by T. Lindsay in 1838, or any other, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Answ. I know nothing about the government survey of this tract.

I have not examined the lines or corners as fixed by any survey. I cannot say on what quarter of the section T. Lindsay's house will be by the government lines. I do not know whether there was a field on the N. E. quarter of this section owned and cultivated by Thomas Lindsay in 1838, or in any other year. I have a general knowledge of the locality. I do not know whether Lindsay did or did not have a line run for the purpose of his pre-emption. I knew nothing of it. I don't know that I ever heard of it until since this suit commenced.

ABRAHAM HARTZELL.

Subscribed and sworn to before me this November sixteenth, A. D. 1857. E. T. WELLS, Comm'r.

Jonah H. Case, a witness produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside in the year 1836 to 1841?

Answ. My age is fifty-nine. I reside near the city of Rock Island. I resided in the spring of 1836, on the Mississippi River, east of what is now the city of Rock Island, and within its present limits; from that time up to the present I have resided at my house south of this city; I removed to that place in the spring of 1836.

Int'y 2d. Do you know the parties to this controversy?

Answ. I am partially acquainted with them, I know the Lindsays better than the other men.

Int'y 3d. Did you know the late Thos. Lindsay in his lifetime? if so, how long; and do you know where he lived from the year 1835 to the spring of 1839?

Answ. I did know Thomas Lindsay; I knew him from the time he came here until he left, that was in the spring of 1839, I think; I do not remember distinctly the year.

When he first came on here he lived for almost two weeks in part of my house; he came here in 1835, I guess in May; after he left my house he moved into a house belonging to Col. George Davenport; he lived there about a year. He then moved into a house which he had built above on the bank of the slough situated on the land in dispute. He lived in this house until he moved across the river into Iowa, where he settled nearly opposite the head of Rock Island on the bank of the river.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Answ. I know the locality of the land in dispute, and was strongly impressed that I knew two of the corners, the southeast and southwest corners. All that I know about it is this, that when the original government surveys were made, I was informed by the surveyors,

that is, the hands with the company, that the southwest corner of that section was in the middle of the road as now travelled, from Rock Island to Moline, the main road up the river; and at about the crossing of the street or road now laid out up the bluff, I identify the spot by the make of the land, that is, as nigh as I can judge. When the corner was established, the southwest corner, a stake was planted there. It stood inside of a field belonging to Col. Davenport, and lying south of the road as then travelled from Stephenson up the river, and I think about eight rods south from the north fence of that field, and about one rod west of the east fence. The southeast corner I found in the same way; the surveyor showed it to me; I went up there when they were surveying to see Mr. Bennett; they told me they had run the south line of the township (which is the south line of this land), through to there, and showed me two stakes, about six or eight feet apart which they said was the corner; they said "there was the corner."

They were camped about a rod from these. Afterwards I laughed at Lindsay about getting his house on to two pieces.

Lindsay built in 1837, I think; I was past his place frequently, all the time that he lived there. I never knew of Bennett's altering the survey at all.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit "A," state what cultivation or improvement there was on said tract of land in the year 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road and near the Mississippi River.

Answ. Well, in the second year that Lindsay lived on that land, he fenced and broke a small field on the north side of the road, running from Stephenson up the river, and running towards the Mississippi river; it was very near the road. I don't think the lane between Lindsay's field and Davenport's was over thirty feet wide; there was about an acre and a half of it; I saw him breaking it. The east line of this field I would think, on this map, would be about at (c), (witness, here, marks on map) and it extended over the middle line of the section on to the northwest quarter of the section. I should think there was probably as much of it on the northwest quarter as on Lindsay's fraction; think that afterwards, Lindsay had a calf pasture about where (b) is on this map. The road run nigher the river then than is marked here. Lindsay cultivated this field, I think, every year, until he moved over into Iowa; he raised potatoes and cabbage, and some roasting corn, I think. He was a blacksmith, and made his living principally by working at his trade.

Int'y 6th. State what opportunities you had of seeing the land in dispute, during any of these years, and what circumstances remind you of the said improvements or cultivation.

Answ. During part of the time that Lindsay was living there, I lived within half a mile of the field. I used to pass there frequently. I used to go to Lindsay's blacksmith shop, which was near his house. I remember seeing him breaking the field; one of his horses had the poll evil, I remember. I saw him cutting up the brush, and grubbing before that, him and his boys. The only other thing I mind about is, that his crops were very small, unusually so.

Int'y 7th. How long have you lived in Rock Island County, and how near said premises? State, if you know, in what year Thomas Lindsay came to Rock Island County. In what house he first resided. In what house he next went, and who built that last-named house; on what part of the land in dispute was his house supposed to be built. If he made a field on the fraction in dispute, where was it made? State whether or not there was a brook or hollow west of his house. Describe what came next. What notable object was there on or near the line between the northeast and northwest quarter of the section? Look at the road marked on the map A. and state whether or not it is correctly set forth as it was travelled in 1838. State whether or not there is now a fence, and whose fence on or near the dividing line, between the northeast and northwest quarter, fractional quarter. And point out or name where the field was on said southwest part of the northeast fractional quarter. Examine the map, and state whether the road is correctly laid down as travelled in 1838.

Answ. I have lived here ever since 1830, and within two miles of the land in dispute. Thomas Lindsay came to Rock Island County in the spring of 1835, I think. He resided at first for a short time with me in my house. He next lived in Col. Davenport's house; it was built by the American Fur Company. He then moved into a house built by himself, near the upper or eastern end of the land in dispute. This house was supposed to have been situated on the line between the two townships, 17 north and 18 north, range 2 west, and partly on the land in dispute, and partly on the quarter south of it. He did make a field on the fraction in dispute; I think in the second year that he lived there, in 1838; possibly, it may have been in the fall of 1837. There was a small ravine running west of his house, and between that and the stable; its position and course were, I should think, as represented at (d) (witness, here, marks on the map). There was a little truck patch west of the brook on this land; and west of this, and north of the road, was the stable and calf pasture. I should think that the road was set out on this map nearly as it was travelled in 1838, but that south of (c) it approached nearer to the river. There is a fence running about where the line between the northeast and northwest quarters of section 36 is; it bounds Hibbard Moore's premises, and the place which formerly belonged to Lemuel Andrews; Elisha Reynolds owns it now, I believe; this fence is just east of a stone barn built by Andrews.

Witness locates the field as before, at or near (c), and says the road, in 1838, ran south of the fence.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this.

Ans'r. I have stated in my answer to interrogatory 4th how I know where the lines ran; the corners were shown to me by the surveyors. I am well acquainted with the premises, and identify the corners and lines lately run about the premises in dispute, and shown to me with those shown to me by the government surveyors in 1835, by my general knowledge of the locality and the make of the ground; I saw Lindsay's improvements, and know that his field of which I have spoken was north of the line which the surveyors showed me. I do not know whether the map referred to in int'y 5, is correct or not. Whether the house is correctly located with reference to the lines I can't say; the field at (c) is as I suppose correct.

X-inty 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargents?

Answer. I dont think that Mr. Sargent's survey as shown here corresponds with Mr. Bennett's survey; as I understood the line from Bennett's survey, the house was right on it. I received my information from the surveying party. I don't know positively anything about the lines or corners as established by Sargent's survey. I supposed the southwest corner to be the same in both. I didn't see Sargent's survey made, but have been shown the southwest corner by a surveyor, Mr. Gilbert; he also pointed out to me other points in the line, but not the southeast corner, and as that line ran, the house was south of it, very near it. The portion of this lot cultivated by Lindsay would be considerably north of that line near the bank of the river.

Cross-int'y 3d. Have you examined the land lately, if so, can you positively swear from personal knowledge that the house was on this quarter, or that any (any) portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you are asked to answer is whether the house and field occupied by Lind-

say, were on this particular quarter section now in dispute according to the true lines. State which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Answ. I have been upon the land lately, within three or four weeks, and the lines were pointed out to me by a surveyor, as I have before stated. I do swear positively that, according to Bennett's survey, as the line was pointed out to me by the surveying party in 1835, the house built by Thos. Lindsay was partly on this quarter; by the line of Sargent's survey, as shown to me by Mr. Gilbert, it was not on this quarter. Lindsay's field would be on this quarter according to both surveys. I don't know which is the true line, Bennett's or Sargent's; don't know which of these maps is correct; have no means of determining. On Sargent's map the house of Lindsay will be south of the line, and the field north of it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement, and cultivation were on the N. E. frac. quarter of sect. 36. Did you then, or do you now, know personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answ. In answer to this, I can merely state what I have stated before, that I was shown Bennett's line by his surveying party. I know that Lindsay's house was on that line, and his field north of it. I do not know positively whether the line shown me was the true line or not, or whether it was Bennett's line; but I know nothing to the contrary, and have always supposed it to be so.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew and now know the lines.

Answ. Lindsay did rent some land of Col. Davenport in the same year in which he built his house; this land was within Davenport's field on the southwest quarter of section 36 principally, but lapping over a little probably on to all the other three quarters of that section. I think probably Lindsay cultivated this land two years, until he got his own broken up. This was not the only land cultivated by him. I have already spoken of and described his field on N. E. sect. 36.

Cross-int'y 6th. Did not Thos. Lindsay *claim* a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Answ. I know nothing at all about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the northeast quarter *owned* and cultivated by T. Lindsay in 1838, or any other, and what, year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Answ. I know nothing more than what I have already stated in regard to the lines and corners as fixed by Bennett's survey. By that survey there was a field on the northeast quarter of this section owned and cultivated by Thos. Lindsay in 1838. I know nothing as to any line run by Lindsay, or for him, to establish his pre-emption.

Cross-int'y 8th. If the road is not correctly marked down on the map, as asked to say in direct interrogatory 7th, please mark where it ought to be on said plat; and please state, further, if the house and field were not on another quarter, according to the true lines. If you answer that Thos. Lindsay cultivated a field, state whether he did so as, and was he, the owner of it, or did he rent the field?

Answ. I have said that the field is laid down on the map nearly as travelled in 1838, but a little too far south. I should think probably the line (*c*) (*c*) would be nearer it. (Witness here marks on the map.) Perhaps that line may be a little too far north, but it is nearer it. Lindsay's house and field were both on this quarter, according to the lines pointed out to me by the surveying party in 1835, as already stated. Where the true line is, I don't know. Thos. Lindsay rented and cultivated a part of what was called Davenport's field, and afterwards cultivated one as his own on the land in dispute.

Witness here desires to correct statement made as to residence of Thos. Lindsay in his house; thinks it was not longer than five days or a week. JONAH H. CASE.

Subscribed and sworn to before me, this November 17th, A. D. 1857. E. T. WELLS, Comm'r.

David B. Sears, a witness produced, cautioned, and sworn, testified as follows, to wit:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Answ. My age is fifty-three. I reside at Moline, Rock Island County. I am in the manufacturing business. From 1836 to 1841 I resided at the place where Moline now is.

Int'y 2d. Do you know the parties to this controversy?

Answ. I do.

Int'y 3d. Did you know the late Thos. Lindsey in his lifetime?

and if so, how long? and do you know where he lived from the year 1835 to the spring of 1839?

Answ. I knew Thos. Lindsay from about the middle of August, 1835, till some time in the spring or summer of 1839. He resided during that time in section 36, township 18 north, range two west, in Rock Island County.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you do not know the numbers, state if you know the locality.

Answ. I do know both the numbers and the locality of the land spoken of. I was acquainted with it from 1835 to 1841. I passed it every month, as often as once a month, and sometimes three or four times in a week during the most of that time. I was not out of the neighborhood during that time.

Int'y 5th. Look at the map of the same hereto annexed marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years if you can remember, and what crops were grown thereon. Point out on the map or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Answ. In 1836, 1837, and 1838, there was a cultivation on that tract of an acre or upwards, as I recollect, at or near the mark (*e*), perhaps the centre of the field was a little lower than that; it extended down near to the centre line between the northwest and northeast quarters of the section, and up east towards Lindsay's home. It was north of the road from Stephenson up the river as travelled, and extended down nearly to the bank of the river. Lindsay raised flax there one year; most of the time there was garden vegetables growing there. I remember seeing potatoes and early corn there, and cabbages, onions, and the usual variety of garden vegetables; it was a very good garden, and generally kept neat and clean.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances reminded you of the said improvement or cultivation.

Answ. I think in 1836 or 1837, Mr. Thos. Lindsay himself called my attention to his growth of flax in that garden. I was passing by on the road, and he called to me. I was in a hurry, and he brought it to the fence and showed me the length of it; it was then just out of the bloom. I do not remember positively which of those years this was in. I used to go up and down the road from Stephenson to my house past this field at that time, probably as often as once a week. Stephenson was our post-office then, and I generally did my

own errands; all our trading was at Stephenson, and this led me frequently by the land in question. One other circumstance I remember connected with this field: one morning, in the summer of 1838, I had come down to Stephenson to get a plow, and going back Mrs. Lindsay called to me as I was passing the cultivation, of which I have spoken, and gave me some top onions, potatoes, and cucumbers. I remember these vegetables were all very large for the season of the year, it being quite early in the summer.

Int'y 7th. How long have you lived in Rock Island County, and how near said premises? State, if you know, in what year Thos. Lindsay came to Rock Island County, in what house he first resided, in what house he next went, and who built that last named house. On what part of the land in dispute was his house supposed to be built? If he made a field on the fraction in dispute, when was it made? State whether or not there was a brook or hollow west of his house. Describe what came next; what notable object was there on or near the line between the northeast and northwest quarter of the section. Look at the road marked on the map A, and state whether or not it is correctly set forth as it was travelled in 1838. State whether or not there is now a fence, and whose fence, on or near the dividing line between the northeast and northwest quarter fractional quarter, and point out a name where the field was on said southwest part of the northeast fractional quarter. Examine the map and state whether the road is correctly laid down as travelled in 1838.

Answ. I have resided in Rock Island County about twenty-two years, a little over that, and most of the time within one mile and a half of the premises in dispute.

I first saw Thomas Lindsay in 1835; I think he informed me that he came here a year or so previous to that, but of this am not positive. He told me that he at first resided in a house belonging to Col. Davenport, a short distance below this improvement. Next he moved into a house which he built himself, situated some little distance above the garden patch of which I have spoken in section 36, and near the east and west centre line of the section, and south of the road running from Stephenson up the river. I do not know positively on what land this house was situated. I understood from Lindsay, at the time he was living there, that it was on the southeast quarter of the section; afterwards Mr. Lindsay procured a survey to be made by Mr. Baxter, the county surveyor, by which the line ran through the house, and on the south side of Lindsay's blacksmith shop. Mr. Baxter showed me the line where he had notched it on the chimney. The line running from corner to corner, as lately shown me by Mr. Gilbert, a surveyor, leaves the house on the south. Lindsay supposed that his house was very near the line; before the survey he thought it was on the southeast quarter.

The little field or garden patch of which I have spoken was under

cultivation in 1836, and I think was made in that year; in 1837 Lindsay fenced in all of the southwest fraction of the northeast quarter up to the road; think the road is not correctly laid on this map; would think it ran nearer in the line (f) (f) (f) (f). (Witness here marks on the map.) I remember Lindsay's fence from the fact that I was road supervisor for this district in 1837, and Lindsay laid his rails in the road preparatory to building across it. I ordered him to move them so as not to obstruct the road, which he did.

There was a little brook running west of Lindsay's house; beyond this to the west was an inclosure which was used as a pasture; beyond this and adjoining it was the cultivated field; near the centre line between the northeast and northwest quarters of section 36 was an old log barn or stable, used in 1836 as a butcher shop by James Copp; this was on the northwest quarter, and south of the road. There is now a fence on the dividing line, I think, between northeast and northwest quarters of this section. I believe it is the east boundary of Lemuel Andrews' premises.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see this line run, or do you know of your own personal knowledge, anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Answ. I never saw this land surveyed, but have frequently seen the corners established by the government surveyors in 1834 or 1835; I mean the southeast and southwest corners of the section; I have also seen the centre corner of the section as established by the county surveyors. Mr. Baxter, County Surveyor in 1838, showed me the division lines established by him between the northeast and southeast quarters, and between the northeast and northwest quarters; I don't know positively whether Baxter was county surveyor, but if not, he was acting as deputy. Mr. Gilbert lately showed me the corners and lines; don't know where the *true* boundary line runs, except what I have stated; I know nothing about the lines; I cannot swear that the map spoken of is a correct representation of the lines of the quarter section; the field as placed by me at (c) is I think correctly located; a straight line on the south run from corner to corner would run north to the house. The meandered line as shown on the map of the government surveys, cuts the south

line of the northeast quarter, and would run through Lindsay's house and to the south of the blacksmith shop.

Cross-int'y 2d. Look upon the map of the land, as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answ. The field which I have spoken of as cultivated by Lindsay is about at (c) I would think, and extended up east to the pasture field near the brook or ravine at (d) (witness marks on the map); don't know whether the brook is on the southwest or southeast fraction; I locate it with reference to the house and stable as here placed. The house is correctly located south of the south line of the northeast quarter, but I think a little too far off.

Cross-int'y 3d. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you are asked to answer is whether the house and field occupied by Lindsay were on *this* particular quarter section, now in dispute, according to the true lines; state which of these two maps is the true and correct one and lays down the correct line, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated fraction lie?

Answ. I have examined the land in dispute lately; the field is correctly located at (c), and was on the northeast quarter of section 36, by all the lines. The house by Bennett's survey was directly on the line, the line cutting it near the middle; and the blacksmith shop was wholly on the northeast quarter by Sargent's survey; they are both (the house and blacksmith shop) on the southeast quarter. In regard to the two maps shown me, neither of them correspond with that of the original government survey which I have seen and of which I have a copy. As to the location of the house and field by Sargent's survey, I have already stated in answer to the previous cross-int'y.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation were in the northeast section 36. Did you then or do you now know personally of your own knowledge where the true line runs which divides that quarter from the other? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answ. I know that the improvement of which I have spoken was on the N. E. fr. quarter without any doubt, because it was some distance from the south line of the quarter, it extended down to the west line or nearly to it; I only know about the lines of this quarter by my knowledge of the government corners, and of the line run by

Baxter, as I have before stated; Baxter's line corresponds with Bennett's survey.

Cross-int'y 5th. Did not Thomas Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field or a portion of it the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew, and now know the lines.

Answ. In the spring of 1837 I saw Mr. Thomas Lindsay plowing in the southwest quarter of section 36; he told me he rented of Col. Davenport. I believe that a small portion of this field ran over on to the northeast quarter. This was not the only piece of ground cultivated by Lindsay; in the same year he cultivated the small field at (c) as before mentioned; the fences of these fields did not join, and there was a county road running between them.

Cross-int'y 6th. Did not Thomas Lindsay *claim* a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Answ. In 1836 or 1837 Mr. Thos. Lindsay told me that he had previously purchased of Col. Davenport a claim on the southeast and northeast quarters of this section, and built his house with the intention of pre-empting the southeast quarter, supposing it to be upon that quarter. The southeast quarter was floated from him in the spring of 1836. I don't know what cultivation he had on the southeast quarter, but believe he had some; whatever it was, it did not lie on the road. In the spring of 1838 I remember he spoke of building another house on the southwest part of the northeast quarter with a view to pre-empting that fraction; this was before Baxter's survey was made; after that he told me that he was satisfied that his house was on the line, and that his bed being on that side of the house which was north of the line, he might pre-empt on the northeast fraction.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter *owned* and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line?

Answ. I am acquainted with the original government corners of this tract, and have been since very shortly after they were established. I pass the southeast corner very frequently, as before stated; the government line established by Bennett cuts the house near the centre. There was in 1838 a field owned and cultivated by T. Lindsay on the northeast quarter as by that survey. Lindsay did have a line run, as before stated, by the county surveyor, Mr. Baxter, in 1838. The surveyor, Baxter, showed me that by following the

field notes the line was circular or curved between the northeast and southeast quarters.

Cross int'y 8th. If the road is not correctly marked down on the map as asked to say in direct interrogatory 7th, please mark where it ought to be on said plat, and please state further if the house and field were not on another quarter according to the true lines. If you answer that Thos. Lindsay cultivated a field, state whether he did so as and was he owner of it, or did he rent the field?

Answ. I have already stated that the road is not correctly marked on the map attached to the direct interrogatories. I have marked the road as it ran in 1838 at (f) (f) (f) (f). Thos. Lindsay's field was on the northeast quarter by all the lines of which I have any knowledge. His house, as stated before by Bennett's survey, was on the line between the northeast and southeast quarters. This field of which I speak Lindsay cultivated as his own.

DAVID B. SEARS.

Subscribed and sworn to before me this November 17th, 1857 A.D.
E. T. WELLS, Comm'r.

Orrin Skinner, a witness produced, cautioned and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence and occupation? and where did you reside from the year 1836 to 1841.

Ans. My age is thirty-seven; I reside at Pleasant Valley, Rock Island County; I am a farmer. From 1836 to 1841 I resided at the same place.

Int'y 2d. Do you know the parties to this controversy?

Ans. I do know them.

Int'y 3d. Did you know the late Thos. Lindsay in his lifetime; and if so, how long? and do you know where he lived from the year 1835 to the spring of 1839?

Ans. I did know Thos. Lindsay; he was living on the premises in dispute when I came to the country, in the fall of 1835; he resided there all the time that I knew him, but the date that he left there I cannot remember.

Int'y 4th. Were you from the year 1835 to 1841 or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Ans. I did not in 1835, and do not now know positively, the land spoken of by numbers, but I know the land in dispute. When I first came here and ever since I have passed and repassed the spot quite frequently.

Int'y 5th. Look at the map of the same hereto annexed, marked exhibit A., state what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either

of them, and what years, if you can remember, and what crops were grown thereon. Point out on the map or name on what part of the premises said improvement or cultivation if any was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Ans'r. There was on the land in the year, between 1836 and 1840, but what year I can't say, a small cultivated patch of from a quarter to half an acre in size; it lay direct north of the road as then travelled, and ran near to the Mississippi River. I should think that on this map the field should be somewhere between (c) and the dividing line between the northeast and northwest quarter of the section —have no recollection of anything as far up as (c). I remember seeing flax growing in this field some time between 1836 and 1840.

Int'y 6th. State what opportunity you had of seeing the land in dispute during any of these years, and what circumstances remind you of the said improvement or cultivation.

Ans'r. I was passing the place frequently during all those years. I used to go from my place to Stephenson to do my trading; this was our post office, and for several years all of our business was done here; this was our market. I remember the flax which I saw growing there, because it was the first that I ever saw in this country.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840 both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs. Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this; give your means of information.

Ans. I know nothing further as to the lines of the land in dispute than what was told me by Mr. Gilbert, a surveyor, in the presence of the parties to this suit, some three or four weeks ago; he pointed out the southwest corner of the tract in dispute, and gave me the bearings of the lines running north and east; and I am confident that the cultivation of which I have spoken, as seen by me between 1836 and 1840, was on that land. I do not know where the true boundary line runs—never saw it run. I do not know whether the map spoken of is correct or not, or whether the lines of that quarter section, or the house or field are correctly located.

Cross-inty. 2d. Look upon the map of this land, as made by Mr. Sargent's survey, now shown you, and state if you know by personal

examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent's survey.

Ans. I think that if this map is a correct plat of the lines as pointed out to me by Mr. Gilbert, the field of which I have spoken would come about at (c) (witness marks on map). The house I should think was located about as here represented.

Cross-inty. 3d. Have you examined the land lately? If so, can you positively swear, from personal knowledge, that the house was on this quarter, or that any portion of this quarter was in tillage by Tho's Lindsay during the year mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines? State which of these two maps is the true and correct one, and lays down the correct line; and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Ans. I have looked at the land lately, and was shown the lines as before stated. I do not know whether that was the true line or not; but if it was, the field of which I have spoken was on this land; whether the house was or was not, can't say. I don't know which of the two maps shown me is correct; if the lines on Sargent's map are true, the house will come south of the line, and the cultivation north of it.

Cross-inty. 4th. If you state anything positive in answer to direct Interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation were on the N. E. fr. quarter of section 36. Did you then, or do you now, know personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans. I did not, from 1836 to 1840, know where the N. E. fr. quarter of section 36 was, and do not now; but if that is the land which was shown to me, the cultivation was on that quarter. I did not then, and do not now, know where the true boundary line runs which divides this quarter from the others. I only know of these lines by what Mr. Gilbert told me; don't know whether that information is correct or not.

Cross-inty. 5th. Did not Tho. Lindsay rent and cultivate a field of Davenport's, an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew and now know the lines.

Ans. I never knew of his renting any land from Davenport, or cultivating any other land than the patch I have spoken of.

Cross-inty. 6th. Did not Tho. Lindsay claim a pre-emption on

another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Ans. I know nothing about it.

Cross-inty. 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter, owned and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans'r. I know nothing as to the government surveys of this tract; can't say on what quarter the house will be by those surveys, nor whether there was a field by those surveys on the northeast quarter owned and cultivated by T. Lindsay in 1838, or any other year; don't know that Lindsay ever had a line run for any purpose.

ORRIN SKINNER.

Subscribed and sworn to before me this November 17th, 1857.

E. T. WELLS, Comm'r.

Daniel Beal, a witness produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans'r. My age is forty-two; I reside in the town of Zama, Rock Island County; am a farmer by occupation; I resided at the same place between 1836 and 1841.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I know the Lindsay boys, and Mr. Hawes.

Int'y 3d. Did you know the late Thos. Lindsay in his lifetime; and if so, how long? and do you know where he lived from the year 1835 to the spring of 1839?

Ans'r. I knew Mr. Lindsay, Thomas, I think his name was, from the time he first came here, the year I cannot recollect, until the time that he died. When he first came here, and for several years he resided on the bank of the Mississippi, east of what was then Stephenson, on the land in dispute, or near there. I understood at the time he was living there, that his house stood on the south line of this land.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the number, state if you know the locality.

Ans'r. I know the land in dispute by its locality, but not by the number. I was acquainted with it during all the time from 1835 to 1841.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit A, and state what alteration or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of the premises said improvement or cultivation, if any, was situated; and whether on the north or south side of the then travelled road, and near the Mississippi River.

Ans'r. Between the years 1836 and 1840, about the year I cannot be positive, though I should think it was 1837 or 1838, there was a small cultivation on that land on the north side of the road and near the river; I should think it was about at (c) as marked on the map; they might have been an acre or an acre and a half, perhaps not so much. I recollect seeing some turnips, and I think some cabbages, growing there in some of those years.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Ans'r. During those years, I used to come to Stephenson every two or three weeks; part of the time that was our post-office, and we always went to market there; going and between my place and Stephenson, we passed right by this land; I noticed and remember the cultivation, of which I have spoken, because it was a small piece separated from everything else, fenced in by itself.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge, anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5, is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this, give your means of information.

Ans'r. I never saw the land surveyed. Know nothing of my own knowledge about the lines; I was on the land this fall, when the surveyer, Mr. Stillman, pointed out the lines. It was agreed by both parties, that the lines ran about as he stated. I do not know whether the map referred to is correct, nor whether the house and field are correctly located with reference to the true lines; couldn't tell.

Cross-inty. 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ansr. I do not know the line as fixed by Mr. Sargent; if it be that shown me by Mr. Stillman in the presence of the parties, the house is correctly located on the map, this field would come north of the line, and I think very near at (c), perhaps a little east of it.

Cross 3d. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the year mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter-section now in dispute according to the true lines; state which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct; on which side of the line on Sargent's map will the house and cultivated portion lie?

Ans'r. I have been upon the land lately, as before stated. I cannot swear that Lindsay's house was on this quarter; I understood at the time Lindsay was living there that it was on the south line of this quarter, and partly on this quarter and partly on the southeast; the line shown me by the surveyor, Stillman, as before stated, ran north of the house; where the true line runs I cannot say, nor whether Lindsay's cultivation was on this quarter, but according to the lines showed me it was.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement and cultivation, were on the N. E. f'r quarter of sect. 36. Did you then or do you now know personally of your own knowledge where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans'r. I did not in 1835, nor up to 1841, know where the lines of this quarter run. I know nothing about them now, further than what I have already stated, that they were pointed out by a surveyor, and acknowledged by all the parties to be correct. But I know right where the field was. I could go right the spot now, and I know that it was on this land.

Cross-int'y 5th. Did not Tho. Lindsay rent and cultivate a field of Davenport's, an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section. If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew and now know the lines.

Ans'r. I do not know that Lindsay ever rented any land of Davenport. If so, it was not the only land cultivated by him. I know about the little field of which I have spoken. I supposed that he owned this.

Cross-int'y 6th. Did not Tho. Lindsay claim a pre-emption on an-

other quarter section by reason and on account of this same house and cultivation referred to? state all you know about it.

Ans'r. All that I know about it is, that I saw him one night, up above Hampden, when he had started to go to Galena to prove a pre-emption. Didn't say what land he intended to pre-empt, only where he lived.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyor, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter *owned* and cultivated by T. Lindsay in 1838, or any other, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans'r. I never examined the United States surveys; do not know the lines and corners as run and fixed by the U. S. surveyors; cannot say on what quarter the house will be by those lines. Do not positively know whether by those lines Lindsay's clearing would be on the northeast quarter or not. Do not know whether Lindsay did or did not have a special line run for the purpose of proving up his pre-emption; he may.

DANIEL BEAL.

Subscribed and sworn to before me this November 18, 1857.

E. P. WILLS, Comm'r.

Daniel Mosher, a witness produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Answ. My age is fifty-five years. I reside at present in Hampton Township, Rock Island County; am by occupation a farmer. I resided from the fall of 1837 till the next spring in and near the city of Rock Island, then Stephenson. In the spring of 1837 I moved across Rock River about 5 miles from Rock Island. In the spring of 1839 I returned to Rock Island, and resided at that place until about four years ago.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I do know them.

Int'y 3d. Did you know the late Thos. Lindsay in his lifetime; and if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans'r. I knew Mr. Lindsay by sight. I first saw him to know him in the spring of 1838. I knew him and saw him occasionally up to the time of his death. From 1838 to the spring of 1839, he resided above Rock Island, on the bank of the river, on the land which I suppose to be the land in dispute, or near it. I don't suppose that the house in which he lived was on the disputed land.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the north-

east fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Ans'r. From the spring of 1838, until the present time, I have been acquainted with the land in dispute. I did not know it then by the numbers, but by its general locality.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of the premises said improvements or cultivation, if any, was situated, and whether, on the north or south side of the then travelled road and near the Mississippi River.

Ans'r. In the summer of 1838, and in the spring of 1839, there was a cultivation on the land in dispute lying north of the then travelled road, and running down to near the Mississippi River. It was pretty well toward the lower end of this piece somewhere between (c) and the west line of the piece; there might have been an acre of it, perhaps no more than half an acre; I know there was a small piece cultivated in there; I think it was cultivated for several years, some two or three; I do not recollect what crops were grown thereon.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvement or cultivation?

Ans'r. In 1838 I used to go from the farm on which I worked to town very frequently, and always used to pass right by there. In 1839 I was living in town and working at the carpenter's trade, and to have work above town, which took me by there often.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840 both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section; and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Ans'r. I identify the spot where the cultivation formerly was by my general knowledge of the locality. I know it to be on the land in dispute from what was told me by the surveyor. I do not know of my own personal knowledge anything about the lines of this

quarter. I never saw it surveyed. Do not know whether the map referred to is a correct representation of the lines of that quarter or not. Do not know whether the house is correctly located or not. The field, I think, is correctly located at (c) or a little west of it.

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. I do not know as to how Mr. Sargent's line runs; do not know that I ever seen where it runs. The line showed me by Mr. Gilbert, the Surveyor, runs north of the house, the cultivated portion would be north of that line. If the red line on this map be the line showed me, the cultivation would come at (c) or near there.

Cross-int'y 3d. Have you examined the land lately? If so, can you positively swear from personal knowledge that the house was on the quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during either of the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines? State which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Answ. I have examined the land lately. I cannot swear positively that the house was on this quarter, nor what quarter it was on. I am very certain that a portion of this quarter was cultivated in 1838 and 1839, by whom I cannot say. The true lines of this quarter I know nothing about. I do not know which of these two maps is the correct one. On the map of Sargent's survey, the house will be south of the line and the cultivation north of it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement, and cultivation were on the N. E. fr. quarter of sect. 36. Did you then, or do you now, know personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans. I did not at the time of which I speak, and do not now, know, of my own knowledge, anything about the lines of this quarter nor where the true line runs which divides it from the others. I have been shown the line lately by a surveyor, but don't know whether correctly or not.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cul-

tivated any other piece, and where the lines run, and how you knew, and now know, the lines.

Ans. I do not know that Lindsay ever rented any land of Davenport. I know nothing about it.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter section, by reason and on account of this same house and cultivation referred to? State all you know about it.

Ans. I know nothing about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyor, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans. I know nothing about the government surveys of this tract. Cannot say on what quarter the house will be by those lines. Do not know, except from hearsay, that Lindsay owned and cultivated a field on the N. E. quarter in 1838. Do not know that Lindsay ever had a special line run to prove up his pre-emption.

DANIEL MOSHER.

Subscribed and sworn to before me, this Nov. 18, 1857.

E. T. WELLS, Commissioner.

Sereno Powers, a witness, produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans. My age is thirty-seven. I reside in the city of Rock Island; am a commission merchant. I resided in Rock Island from the fall of 1837 to 1841.

Int'y 2d. Do you know the parties to this controversy?

Ans. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime; and, if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans. I suppose I have seen Thos. Lindsay very often, but I don't remember him at all. I knew where the Lindsay family lived from the time I came here up to the spring of 1839. They lived near the bank of the Mississippi River, east of Stephenson, now Rock Island, and near what I suppose to be the land in dispute.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Ans. I only know what land is in dispute by what has been told me by Mr. Barnes and Mr. James Lindsay. I know that land which they told me this suit was about, not by numbers but by its locality. From the time I came here, in 1837, up to 1841, I was acquainted with that land, and used to pass it frequently.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years if you can remember, and what crops are grown thereon. Point out on the map or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Ans. I remember that in 1838 or 1839 there was a small inclosed field on that land lying north of the road as then travelled, and near the river; there might have been two or three acres of it; in the southeast corner of the field was a little pasture, where I used to see them go to feed their cattle. I should think this cultivation was rather east of (*c*) (witness points out on the map); it lay adjoining the pasture, which I should think was at (*b*). Don't remember what crops were raised on it, they used it for garden purposes.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of these years, and what circumstances remind you of the said improvements or cultivation.

Ans. I lived for about two years, during 1838 and 1839, I think it was, in a house belonging to Col. Davenport, on land which I think lay adjoining the premises in dispute. I used to go up and down the road very often by these improvements hunting my cows, and on other business, and of course couldn't help seeing them.

Cross-Ex'n.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the lines run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? if yea, state how you personally knew this; give your means of information.

Ans'r. I knew that the cultivation was on this land as represented on this map (map attached to direct interrogatories) because I saw it there. I know the location of the land. Don't know anything about the lines, though I helped to survey it once. The map referred to is not correct; that is, the road is not correctly laid out (witness

refers to the line of the road originally laid down on map), it always ran north of Lindsay's house. Whether it represents the lines correctly can't say.

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. I know nothing about Sargent's lines. The cultivation lies north of the red line on this map, the south line of the quarter as here represented, somewhere near (*b*); a little east of it, and near the red line the house would lie south of the line about as represented here.

Cross-int'y 3d. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were in this particular quarter section now in dispute according to the true lines; state which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct, on which side of the line on Sargent's map will the house and cultivated portion lie.

Ans. I have not examined the land lately. I am confident that there was a cultivation there on part of it; can't say how much of it there was, nor by whom made or owned. I supposed the Lindsays to own it at the time, and know of no one else having ever laid claim to it. The house, I think, was not on this quarter, but as to the location of both house and field, I speak not from any knowledge of the lines of the quarter, but from my general knowledge of the locality; all I know is that this cultivation was north of the Moline and Stephenson road. As to the correctness of the two maps I can only give my opinion. I think Sargent's map the most nearly correct. I speak in reference to the road and the house, the section lines I don't know about.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement, and cultivation, were on the N. E. fr. quarter of sect. 36. Did you then, or do you now know personally of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans. I know nothing as to where the lines run. I have never been told where they run, and can't say positively that the improvements were on that section, because I don't know where it lies.

Cross-int'y 5th. Did not Tho. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section; if yea, was not that

field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe where and when he cultivated any other piece, and where the lines ran, and how you know and now know the lines?

Ans. I don't know whether Lindsay did or did not rent of Davenport. I know nothing about it.

Cross-int'y 6th. Did not Tho. Lindsay claim a pre-emption on another quarter section by reason of an account of this same house and cultivation referred to? State all you know about it.

Ans. I know nothing about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyor, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsay in 1838, or any other, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans. I know nothing about the government surveys of this land, and cannot say on what quarter the house will be by those lines, nor whether there was on it a field owned and cultivated in 1838, or any other year, by T. Lindsay. Do not know whether Lindsay ever had a line run for a ny purpose. SERENO POWARS.

Subscribed and sworn to before me, this November 19th, A. D. 1857. E. T. WELLS.

John G. Corbin, a witness produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans. My age is thirty-nine past. I reside at Pleasant Valley, Hampton Township, Rock Island County. I am a farmer. In 1836, 1837, and 1838, I resided in Whiteside County, in this State; during 1839 I lived in Indiana. The eighth day of January, 1840, I took up my residence at the place where Moline now is, and resided there until 1852.

Int'y 2d. Do you know the parties to the controversy?

Ans. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime? And if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans'r. I was somewhat acquainted with Mr. Lindsay from the fall of 1836 to the fall of 1839. I know where he lived from the first of October, 1836, to the fall of 1839. He was then living in the house known as the Lindsay House, about a mile and a half east of Stephenson, then so called, now Rock Island, near the bank of the Mississippi River.

Int'y 4th. Were you from the year 1835 to 1841, or any part of

that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Ans'r. I do not know the numbers of the land in dispute. I know that it is in range two west, in Rock Island County. I am perfectly acquainted with the locality, and have been ever since 1836.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Ans. I can't say as to the cultivation. I know that in 1836, 1837, and 1838 and 1839, a good part of this fraction, from the creek near Lindsay's house down to the west line of the quarter, was under fence. I never saw anything growing there that had the appearance of being cultivated, though I never was past it in the season to see crops growing. I remember seeing calves there, and cows, and girls milking the cows. This was the night of September 30th, 1836. I stayed over night with old Mr. Lindsay that night. I should suppose there was from two to three acres under fence; that would be my judgment, but couldn't say positively. This inclosure was on the north side of the road, which, as then travelled, lay, I should think, about at (*f*) (*f*) (*f*) (*f*), and reached from the west line of the quarter nearly up to the creek or ravine at (*d*). A division fence was run across this inclosure, near the east end of it, and about eight or ten rods fenced off for a cow-yard.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Ans'r. The first occasion of my seeing the land in dispute was Sept. 1836, as before spoken of. I was then carrying the mail from Rock Island to Galena. I next saw it in 1837, in February of that year. I came from Albany to Rock Island to do some trading; going back, I got stalled near Lindsay's house, and the old man came out and helped me. In March, 1838, I came to Rock Island again; passed the premises; noticed the inclosure; saw some of the family there, apparently clearing up and preparing for gardening. In October, 1839, I came past there again, noticed the inclosure, and saw persons about the house, but didn't speak with them. I do not remember any other circumstance which it would be in place to mention.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the line of the quarter section? Do you know whether the map referred to in interrogatory 5th is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this; give your means of information.

Ans'r. I have seen the south and west lines of the fraction pointed out by a surveyor, the same being acknowledged by both the parties to this suit to be correct. I never saw the lines run. Further than this I know nothing about the lines of the quarter section. I am positive that the inclosure before mentioned was within the lines pointed out to me: the house was not. The map referred to is not a correct representation of those lines as shown to me; by those lines the house would be some fifteen feet off the quarter. Don't know whether the lines shown me were the lines of the original survey or not.

Cross-int'y 2d. Look upon the map of this land, as made by Mr. Sargent's survey, now shown you, and state, if you know, by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. The inclosed part of which I have spoken was north of the road as here laid down, and running down near to the river; it reached from near the west side of the quarter up nearly to the branch or ravine by Lindsay's house. This is quite a true representation of the tract, as the lines have been pointed out to me. The house lies south of the line, as here represented; perhaps not quite so far south.

Cross-int'y 3d. Have you examined the land lately? If so, can you positively swear, from personal knowledge, that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines. State which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Ans'r. I was on the premises about four weeks ago. I cannot swear that the house occupied by Lindsay was on the quarter, or that any portion of this quarter was cultivated by him in any of the

years mentioned, only that it had the appearance of having been cultivated. The field referred to was on this quarter, according to the lines pointed out to me; the house is not. I should say Mr. Sargent's map was the nearest correct of the two—that is, as the lines have been shown to me. On Sargent's map the cultivation will be on the north side of the south line of the quarter, and the house on the south side of it. Whether either of the maps shown me agrees with the government survey, I cannot state.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enabled you to swear that the house, improvement, and cultivation, were on the N. E. fr. quarter of sect. 36. Did you then or do you now know personally of your own knowledge, where the true line runs which divides that quarter from the others. If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans'r. The house I couldn't swear was on the N. E. fr quarter of this section, the inclosure was on the land which has been pointed out to me as the land in dispute. I never knew personally anything about the lines of this section. They were pointed out to me by Mr. Gilbert, a surveyor, whether correctly or not, can't say.

Cross int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's, an adjoining quarter section? If yea, was not that field or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where the lines ran, and how you knew and now know the lines.

Ans'r. I know nothing about Lindsay's renting any land of Davenport. I don't know that Lindsay ever cultivated any land on this section. I can only say that the piece of which I have spoken appeared to have been cultivated.

Cross-int'y 6th. Did not Thos. Lindsay *claim* a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Ans'r. I know nothing about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyors, and can you say in what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter, *owned* and cultivated by T. Lindsay in 1838, or any other, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption and was it not a crooked line? State all you know about it.

Ans'r. I know nothing about the government surveys of this tract. Have never examined the lines and corners ran and fixed by the U. S. Surveyors. Can't say whether by those lines there was a field on this section, owned and cultivated by T. Lindsay in 1838, or any other year. By the lines pointed out to me there was a field on the

land in dispute in 1836, 7, and 8, which bore the appearance of cultivation. I know nothing as to any special line which Lindsay procured to be run. I never heard of it.

JOHN G. CORBIN.

Subscribed and sworn to before me, this November 21st, 1857.

E. T. WELLS, Comm'r.

Henry Powers, a witness, produced, cautioned, and sworn, testified as follows, to wit:—

Int. 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans'r. My age is forty-eight. I reside in the city of Rock Island. I am an invalid by habit and profession, resided at this place from 1836 to 1841.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime? And if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans'r. I did know Thomas Lindsay from April of 1836, to the time he died, three or four years. From the time I knew him to 1839, he lived at a place called the Lindsay place, about a mile and a half east of Stephenson, then so called, now Rock Island, on the bank of the Slough.

Int'y 4th. Were you, from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you do not know the numbers, state if you know the locality.

Ans'r. I do not know the numbers. I know the land in dispute by its locality; from 1836 to 1841, I resided in the neighborhood of it. I believe we were Lindsay's next neighbors.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and what years, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of the premises said improvement or cultivation was situated, and whether on the north or south side of the then travelled road, and near the Mississippi.

Ans'r. In some of the years between 1836 and 1840, but what year or years I cannot recollect, there was a small inclosure there, on the opposite side of the road from Lindsay's house, and a little west of it, somewhere near (b). The road ran north of Lindsay's house, and this inclosure was between it and the river. I recollect of seeing cattle kept there, and at one time something growing.

The size of this I couldn't tell. I merely recollect seeing the inclosure there; what crops were grown I do not remember.

Int'y 6th. State what opportunities you had of seeing the land in dispute, during any of those years, and what circumstances remind you of the said improvements or cultivation?

Ans'r. Living Mr. Lindsay's next door neighbor, I was frequently at his house; often had business that called me past there; used often go by there hunting; the main road of the river ran by there.

Cross-Int'ys.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know, of your own personal knowledge, anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Ans'r. I know nothing of the lines of that quarter section. I never saw the land surveyed. Dont't know whether the map spoken of is correct or not. Couldn't tell anything about it.

Cross-int'y 2d. Look upon the map of this land, as made by Mr. Sargent's survey, now shown you, and state if you know, by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. I never saw the lines as fixed by Mr. Sargent's survey, or by any other. I know nothing about them.

Cross-int'y 3d. Have you examined the land lately; if so, can you positively swear, from personal knowledge, that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned?

The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines? State which of these two maps is the true and correct one, and lays down the correct line; and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Ans'r. I do not know which of these two maps is correct. I know nothing in regard to the lines of the quarter section. I have been near the land lately, but not to make any particular examination of it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear

that the house, improvement, and cultivation, were on the N. E. fr. quarter of section 36. Did you then, or do you now know, personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines ran; and do you know whether that information is correct?

Ans. I cannot swear that the house or improvement were on that land by the numbers. The cultivation was on the land which I suppose to be the land in dispute. The house I understood at the time to be on the line of this quarter, and partly on it. I did not then, and do not now, know where the line runs which divides this quarter from the others.

Cross-int'y 5th. Did not Tho. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew, or now know, the lines.

Ans. I don't know that Lindsay ever rented land of Davenport. I know nothing about it.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter section, by reason and on account of the same house and cultivation referred to? State all you know about it.

Ans. I know nothing at all about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyor, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans. I know nothing about the government surveys of this tract. Have never examined the lines and corners run and fixed by the U. S. Surveyors. Cannot say on what quarter the house or field will be by those surveys. Do not know that by those lines there was a field at all on the N. E. quarter in 1838, owned and cultivated by T. Lindsay. I know nothing as to any line procured to be run by Lindsay. HENRY POWERS.

Subscribed and sworn to before me, this Nov. 21, 1857.
E. T. WELLS, Commissioner.

John Tindall, a witness, produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans. My age is about forty-three. I reside eight miles south of this place, in Bowling Township, Rock Island County. I am a

farmer. From the fall of the year 1836 up to the spring of 1839, I resided on the bank of the Mississippi River, on the Illinois side, in Rock Island County, just opposite the lower end of the island of Rock Island, and within the present limits of the city of Rock Island. Since the spring of 1839 to the present time, I have resided where I do now.

Int'y 2d. Do you know the parties to this controversy?

Ans. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime; and, if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans. I did know Mr. Lindsay. I became acquainted with him first in the fall of 1836, and knew him and saw him off and on up to the time of his death. From the fall of 1836 to 1838 or 1839, he lived something like a mile above my place on the bank of the river, in Rock Island County, at the place called the Lindsay place.

Int'y 4th. Were you, from the year 1835 to 1841, or any part of that time and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Ans'r. I do not now know the land spoken of by the numbers; I do know the locality of the land in dispute, and have been acquainted with it more or less ever since I came to the country.

Inty. 5th. Look at the map of the same hereto annexed, marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Ans'r. I recollect that in the year 1838 there was a small inclosure on that land on the north side of the road and right on the river bank; there might have been an acre or less. I shouldn't think there was over that, that is, in the field which was cultivated; there was a calf pasture attached to it which was larger; the calf pasture was above the field which was cultivated. In the year 1838 the Lindsays raised flax there; they had a garden there, but I don't remember that I ever saw anything also growing there. I should think the field would be about at (c), or between that and the river.

Inty. 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Ans'r. From 1836 to 1839, as I have stated, I lived within half a mile of this field; it was right on the road, and I used to pass up and down by it frequently. Mr. Lindsay was a blacksmith, and had

a shop near his house to which I used frequently to go by this field to get work done.

Inty. 8th. Do you remember any particular circumstances which remind you of the crop grown on the premises. What crop do you remember, and why? What year was it, and why do you remember, and how near did you live to the premises in dispute at the time?

Ans'r. I do not know that I can add anything to what I have said to account for my remembrance of the crop raised there; we lived within half a mile of Lindsay's field at the time; and I remember that the flax crop was grown the last year of our residence there; and that I moved away to the farm where I now live in the spring of 1839.

Cross-Ex'd.

Cross-inty. 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there then was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this; give your means of information.

Ans'r. I have seen the lines of this land run; it was years ago, in 1836, 1837, or 1838, I don't remember which. Mr. William T. Brashur run the lines, I think; he was surveying the land adjoining it on the south; I carried the chain for him. I have been shown the southwest corner quite lately, within five or six weeks, by Mr. Stoddart, a surveyor; he gave me the bearing of the lines. I think that the field I have spoken of was on this land as pointed out to me by Stoddard. I couldn't say whether the map referred to is a correct representation of the lines of this quarter or not; it has the appearance; I should think it was correct; the house and field are correctly located in respect to the lines as pointed out to me.

Cross-inty. 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answ. I would think from Stoddart's pointing out, the house was too far south here, it should be on the line. The cultivation I think is a little east of (c) on this map.

Cross-inty. 3d. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you

are asked to answer is whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines. State which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct, on which side of the line on Sargent's map will the house and cultivated portion lie?

Answer. I have examined the land lately; as to the lines, I know nothing further than what I have stated. I was shown the lines by a surveyor, by those lines the cultivation referred to as made by Thos. Lindsay in 1838, and a portion of the house were on this land. As to the two maps, which is the more correct I cannot state—I have no means of determining; on Sargent's map the house should be on the line, and the cultivated portion north of it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement and cultivation were on the N. E. fr. quarter of sect. 36. Did you then, or do you now, know personally of your own knowledge where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answer. I have already stated fully my information as to the lines of this quarter, and from whence obtained. I do not know positively that my information is correct, it agreed with my observation.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew and now know the lines.

Answ. Lindsay did rent a piece of land on an adjoining section, whether of Davenport or not I don't know; it was half a mile southwest of the west line of this fraction. This rented land was not the only land cultivated by Lindsay.

Cross-int'y 6th. Did not Thos. Lindsay *claim* a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? state all you know about it.

Ans'r. I don't know anything about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter *owned* and cultivated by T. Lindsay in 1838, or any other, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans'r. I know nothing about the government surveys of this tract,

have never examined the lines and corners as ran and fixed by the U. S. surveyors. I cannot state on what quarter the house will be by those lines, nor whether Lindsay ever had a field upon it. I don't know anything about any special line procured to be run by Lindsay.

JOHN TINDALL.

Subscribed and sworn to before me this November 24th, 1857.

E. T. WELLS, Comm'r.

Michael Hartzell, a witness, produced, cautioned and sworn, testified as follows:—

Int'y 1st. What is your age, place of residence and occupation, and where did you reside from the year 1836 to 1841?

Ans'r. My age is forty-seven years; I reside in Rock Island County, on the Rock River Bottom, in Moline Township. I am a farmer. I settled in Rock Island in the spring of 1836 (it was then called Stephenson). In the spring of 1838 or 1839 I moved away into Iowa, where I resided until 1842. I stayed in Rock Island from 1836 to 1838 or 1839 or continuously.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I do know them.

Inty. 3d. Did you know the late Thomas Lindsay in his lifetime? And if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans. I did know Thomas Lindsay personally and intimately; he came to the country with us; I knew him from the time he came to the country, in 1835, till he moved away from this county into Iowa; the time I couldn't state exactly, but I think he left here about the time I went over into Iowa, which was in 1838 or 1839. If my mind serves me right, he lived during almost all of the time that I knew him in a house called the Lindsay house, near the fractional quarter in dispute, in Rock Island County, near Stephenson.

Inty. 4th. Were you, from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Ans. I do not know the land spoken of by the numbers; I know the locality. From the time I came to this country, in 1836, to the time I moved over into Iowa, I was acquainted with it, and passed it, and was upon it frequently; after I went into Iowa, and while I lived there, I used to come back occasionally. I think I passed that land and saw it, perhaps four or five times while I lived in Iowa.

Inty. 5th. Look at the map of the same hereto annexed, marked Exhibit A; state what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which year, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of

the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Ans. There was cultivation on that tract during some of those years. I think in 1837 and 1838, I couldn't say whether earlier or later positively; it was on the north side of the road as then travelled; between that and the Mississippi River; there was a little ravine between this field and Lindsay's house. I couldn't speak positively of any crops that were grown there except cabbage; but I saw other crops growing there, I think turnips and potatoes. I think this cultivation was pretty much at the west end of the fraction; somewhere near (c) as marked here; they had also a little calf pasture nearer the house, and just across the ravine from it; this was at (b) I should think; it was on this fraction.

Inty. 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvement or cultivation.

Ans. Being familiar with the family I used frequently to call there; used also to pass by there frequently on business. I remember seeing Lindsay's family frequently, working there; Mrs. Lindsay, I remember, once gave me a couple of heads of cabbage which were grown there. I saw her, or some of the family by her directions, pull them up.

Inty. 11th. State whether or not you informed any of the defendants, and which, where Lindsay's field was on the premises; whether or not you notified him of the claim of Lindsay, and whether or not it was before or after he purchased an interest in the premises.

Ans. I had a conversation with Mr. Barnes, one of the defendants, about the time he was buying; he spoke of buying, or said he had bought, I ain't certain which. I told him that the Lindsays had a claim on that, and that I was afraid he would get himself into trouble. I do not remember that I told him where Lindsay's field was on the premises, but he understood to what I referred.

Cross-examined.

Cross-inty. 1st. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in Interrogatory 5, is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this; give your means of information.

Ans. I would here state that I was on the ground five or six weeks

ago, when a surveyor pointed out the corners of the fraction; it was agreed by all the parties plaintiff who were present, and by Mr. Barnes of the defendants, that the road as it now runs by that fraction is on the line. Further than this I do not, and never did, know anything about the lines. I never saw the lines run, and, of my own personal knowledge, know nothing about them. I think the map referred to in interrogatory 5 is a correct representation of the lines; to the best of my knowledge it is. The house is not correctly located on the map; it should be south of the line. The field, I think, is at (c). I judge by seeing the road so near the river and by the house as marked here, although not quite right.

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know, by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans. The house is located more nearly correct, in respect to the lines, on this map than on the other. I think this map is right in that respect. The field would come north of the road, as it is marked here, and west of the house; about as near as I can judge, at (c).

Cross-int'y 3d. Have you examined the land lately? If so, can you positively swear, from personal knowledge, that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines? State which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct. On which side of the line, on Sargent's map, will the house and cultivated portion lie?

Ans. Several weeks ago I was on the land, as before stated, with the parties and a surveyor, for the purpose of seeing the lines and identifying the tract of land in dispute. To-day I came by there, and looked at it. The house, I think, was not on this quarter, but south of it. I can swear positively, from my own knowledge, that there was a part of this land cultivated by Thos. Lindsay in the years of which I have spoken. The map last showed me, Sargent's map, is the correct one; it lays down the correct lines. I determine by the position of the river, and the road as it formerly ran, and the situation of the house. On Sargent's map, the house will come south of the line, and the cultivation north of it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement, or cultivation was on the N. E. fr. quarter of sect. 36. Did you then, or do you now, know personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know those lines only from infor-

mation of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans. I do not swear that Lindsay's house was on the N. E. fr. quarter of section 36, nor on the land in dispute; it was not, but south of it. The field was on the land in dispute. The numbers I can't swear to. I did not, when Lindsay lived there, know where the lines of this quarter were. I believe I do now. I have been informed as to them by the parties to this suit and by surveyors, Mr. Stoddard and Mr. Gilbert. I should judge that that information was correct.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines ran, and how you knew, and now know, the lines.

Ans. I do not know that Lindsay ever rented land of Davenport. I know nothing about it.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter section, by reason and on account of this same house and cultivation referred to? State all you about it.

Ans. I know nothing about it, except from hearsay. Can't remember that Lindsay ever told me anything of it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyor, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans'r. I don't know anything about the government surveys of this tract, never examined the lines or corners run and fixed by the U. S. Surveyors; don't know that there was by the numbers, any field on this section *owned* and cultivated by Lindsay, in 1838, or any other year; don't know that Lindsay had a special line run for any purpose.

Cross-int'y 10th. If you gave the information asked in the 11th direct interrogatory, you will please answer how you knew then or know now whether the house and field were on the quarter in dispute; give your knowledge of the lines with your means of information.

Answer. At the time of my conversation with the defendant Barnes, I supposed, and always had previously, that the road as now travelled ran on the line of this land. I did not inform Mr. Barnes of the location of the field of Lindsay's.

M. HARTZELL.

Subscribed and sworn to before me, this Nov. 25th, 1857.

E. T. WELLS, Comm'r.

Martha Goyer, a witness, produced, cautioned, and sworn, testified as follows, to wit:—

Int'y 1st. What is your age, place of residence and occupation, and where did you reside from 1836 to 1841?

Ans'r. My age is fifty-six years. I reside at Watertown, in Rock Island County; from 1836 to 1841, I resided at Stephenson, the then country-seat of this county, now called Rock Island.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I know the Lindsays and some of the defendants.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime; and if so, how long, and do you know where he lived from the year 1835 to the spring of 1839?

Ans'r. I was some acquainted with Mr. Thos. Lindsay, our people became some acquainted with the Lindsays, when we first came here in the spring of 1839, and I knew him and he visited at our house occasionally, until he died, which was late in 1839. When we first came here they were living in a house called the Lindsay house situated near the land in dispute, about a mile and a half east of Stephenson; they moved out of there in April, 1839, about the last of that month.

Int'y 4th. Were you, from the year 1835 to 1841, or any part of that time and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you do not know the numbers, state if you know the locality.

Ans'r. I know the locality, but nothing about the numbers. I have known the land ever since I came here.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit "A," state what cultivation or improvement there was on said tract of land in the year 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the road, and near the Mississippi River.

Ans'r. In 1839, the last of April, and as soon as Lindsays left their house, as I have mentioned, we moved in there; at that time there was a small inclosure there on that land on the north side of the road, and close on the bank of the river, there might have been two or three acres of it. I never saw it cultivated, and don't know what crops were grown thereon; we used it to pasture our cattle in. It had the appearance then of having been cultivated the year before, there were old potatoe and corn-hills there with the vines and stalks laying about. (Witness refuses to look at map for want of her spectacles.) The field lay west of a little creek there was near Lindsay's house, and extended down nearly to the west line of the fraction.

Int'y 6th. State what opportunities you had of seeing the land in

dispute during any of those years, and what circumstances remind you of the said improvement or cultivation.

Ans'r. We lived in Lindsay's old house near by this land for eighteen months from the spring of 1839, after that we lived above there, where Moline is now. We used to come to town (Stephenson) to do all our trading. I used to pass it quite frequently.

Int'y 10th. State whether you ever lived in the house said to be built by Thomas Lindsay. What years did you live in it? When did you leave the house? State whether or not when you went there there was a field on the premises, in what direction that field was from the house, and on which side of the then travelled road, and how far from the house; whether or not there were marks of recent cultivation in the field, and in what part of it.

Ans'r. As already stated we did live in the house formerly occupied by Mr. Lindsay's people, and said to have been built by him. We lived in it from April, 1839, to August, 1840. There was, when we went there, a field on the fraction in dispute bearing marks of recent cultivation; at the west end of it, over perhaps half of it, the rest was grown up to plum trees and crab trees, &c. &c. This field was north of the road and a little northwest from the house.

Cross-Int'y.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run? or do you know, of your own personal knowledge, anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? if yea, state how you personally know this. Give your means of information.

Ans'r. I saw this land surveyed in 1840 by Mr. Absalom Baxter, the County Surveyor, I think he was. I believe he was only running the south line. He ate dinner at our house, I remember. The line he said ran through the corner of the house, and from its general direction, though I didn't pay much attention to it, it would come out, I think, at the west end of the fraction near the south line of the road as they now travel it. I was present upon the land this fall in the presence of some of the parties on both sides. Mr. Stoddard, a surveyor, pointed out the lines, and they showed me the land in dispute, and I know that the field was on that very land where Mr. Barnes's mills are now. I know nothing as to the correctness of the map referred to, have no means of determining.

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you and state, if you know by personal

examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. The house is correctly located here, I think, south of the line. The field, I think, was about at (*c*), near the west line of the quarter.

Cross-int'y 3d. Have you examined the land lately; if so, can you positively swear, from personal knowledge, that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned?

The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section according to the true lines. State which of these two maps is the true and correct one, and lays down the correct line; and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Ans'r. I have examined the land lately, as already stated; can't say that Thos. Lindsay ever tilled this land, but the inclosure I have spoken of was on it. I can't say which of these two maps is correct. Think that on Sargent's map the house will be south of the line, and the cultivation north of it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement, and cultivation, were on the N. E. f'r quarter of sect. 36. Did you then or do you now know personally of your own knowledge where the true line runs which divides that quarter from the others. If you know these lines only from the information of others, who gave you the information as to where the lines ran, and do you know whether that information is correct?

Ans'r. I don't know as I have anything further to say as to my knowledge of the lines. I have been informed as to where they ran, but can't say whether that information is or is not correct.

Int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's—an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you knew and now know the lines.

Ans'r. I know nothing about the matter.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter section, by reason and on account of this same house and cultivation referred to? State all you know about it.

Ans'r. I have heard that he did claim another quarter section, and intended to pre-empt it; it was floated from them. I don't know that it was by reason of this house and cultivation that he claimed.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyor, and can you say on what quar-

ter the house will be by those lines, and whether there was a field at all on the N. E. quarter *owned* and cultivated by T. Lindsay in 1838, or any other, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Ans'r. I know nothing about the government surveys of this tract. I don't know that Lindsay ever had any line run.

Cross-int'y 9th. If you state anything which reminds you of the crops raised any particular year in answer to 8th, 9th, and 10th direct interrogatories, please state on what particular quarter section they were raised, and how you know the quarter section, and what particular circumstances enables you to tell on what side of the line the crops lay, and how you know where the lines ran.

Ans'r. I haven't testified as to what crops were raised. I know nothing about them.

her
MARTHA + GOYER.
mark.

Sworn to and subscribed before me this Nov. 25, '57.
E. T. WELLS, Comm'r.

Donahoe Williams, a witness, produced, cautioned, and sworn, testified as follows:—

Int'y 1st. What is your place of residence and occupation, and where did you reside from the year 1836 to 1841?

Ans'r. My age is sixty years. I reside near Moline, in Rock Island County. I have been keeping boarding-house for ten years past. From 1836 to 1841, I resided at the same place; there was no town there then.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime; and if so, how long? And do you know where he lived from the year 1835 to the spring of 1839?

Ans'r. I did know Thos. Lindsay. I knew him from the time he came here in 1835, to the time of his death. From 1835 to the spring of 1839, he lived about a mile and a half east of Stephenson, now Rock Island, near the premises in dispute.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the north-east fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Answ. I don't know the numbers at all. I know the locality—the spot of ground. From 1835 to 1841, I was past it, and used to see it frequently.

Int'y 5th. Look at the map of the same hereto annexed marked Exhibit A. State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1040, or either

of them, and what year, if you can remember, and what crops were grown thereon. Point out on the map, or name on what part of the premises said improvement or cultivation was situated, and whether on the north or south side of the then travelled road, and near the Mississippi river.

Answ. Thomas Lindsay had a small cultivation there on that land of perhaps three-quarters of an acre or an acre; it was inclosed and lay very close to the road on the north side of it, right on the bank of the river. This was twenty years ago this spring. I can't tell how long he cultivated it. I saw there in 1837, flax, potatoes, onions, and I think some corn, growing. This was at the west end of the fraction, about at (c).

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Answ. During those years I passed it every week; there was no business done in Moline then, and I used to come to Rock Island very frequently. I remember the field because the Lindsays had a flax pulling there once to which all the young folks were invited; my step-daughter was there. I laughed at a flax pulling in a piece not bigger than this room.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Answ. I don't know anything at all about those lines except what I have seen lately. I never saw the lines run with a compass, they were pointed out to me lately on the grounds by a surveyor, Mr. Gilbert. He showed me the corners, and how the lines run. I guess the map referred to is correct, as far as my judgment goes it is. The house I think is not correctly located, it should be south of the lines, the field is at (c).

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answ. The house lies south of this line, and the cultivation north of it.

Cross-int'y 3d. Have you examined the land lately? if so, can

you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay, during the year mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute, according to the true lines?

Answ. I was on the land in dispute five or six weeks since. I don't know anything as to where the true lines run—the house is not on this quarter section as pointed out to me. Lindsay's cultivation was on it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation were on the N. E. fr. quarter of sect. 36. Did you then, or do you now, know personally of your own knowledge where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans'r. I know these lines only from information of others; as I have stated, they were pointed out to me by a surveyor, whether correctly or not I don't know.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field or a portion of it the only cultivation ever made by Lindsay on this fractional section, if not, describe when and where he cultivated any other piece, and where the lines run, and how you know, and now know the lines?

Ans'r. I never knew of his cultivated land, for Davenport don't believe he did.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter section, by reason and on account of this same house and cultivation referred to? state all you know about it.

Ans'r. I have heard of this, but don't know anything positive about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract; have you ever examined the lines and corners as seen and fixed by the U. S. Surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarters *owned* and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? state all you know about.

Ans'r. I know nothing as to the government lines or corners, haven't examined them, I don't know anything about Lindsay's having a line run to prove up his pre-emption.

DONAHOE WILLIAMS.

Subscribed and sworn to before me, this November 25th, 1857.

E. T. WELLS, Comm'r.

John Skinner, a witness, produced, cautioned and sworn, testified as follows, to wit:—

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans'r. I am fifty one years old last September; I reside in Hampton Township, Rock Island County; I am a farmer and follow almost anything else at which a man may gain a living; I have resided at the same place since the winter of 1836; I came to this country in 1834.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime; and if so, how long, and do you know where he lived from the year 1835, to the spring of 1839?

Ans'r. I did know Thomas Lindsay, the father of the plaintiff; I was acquainted with him from the time he came here in 1835, I think it was, until the time of his death in the year 1839 or 1840, I wouldn't be certain which; while he was in this county he lived up above Barnes' mill near the land in dispute, in a house built by him. I think that when he first came here he lived in what they called the Mansion House, belonging to Col. Davenport, for a short time; I believe he built in 1835.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you do not know the number, state if you know the locality.

Answ. All the way that I know the lines, is that Messrs. Stoddard and Gilbert, two surveyors, pointed out to me the lines and corners in the presence of Mr. Barnes, and as he acknowledged correctly; I don't know the land by the numbers except by report; I know the locality and have ever since 1834.

Int'y 5th. Look at the map of the same hereto annexed, marked exhibit A, state what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon; point out on the map or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road and near the Mississippi River.

Answ. According to the best of my recollection, Lindsay had a cultivation there in 1837 and 1838, as to the year I won't be positive, only I know it was between 1836 and 1840; it was on the north side of the road between that and the river; it was situated toward (c), a little west of it if anything; it was fenced clear up to where the brick house, built and formerly owned by Mr. Hawes, now stands. The cultivation might have been an acre or over, enough to make a decent garden piece; it was west of (c), as before stated;

I saw potatoes, and I think some pumpkin vines, and some other garden vegetables, growing there; I have a faint recollection about flax, but I wouldn't be positive about that.

Int'y. 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Ans'r. The way I come to see the land was this: I used to come to Stephenson to do all my trading; used to pass that land coming and going almost always once a week, and sometimes two or three times a week; have stopped at Lindsay's sometimes to get my blacksmithing done; I couldn't help remembering the cultivation, passing it as often as I did, particularly as it was a garden cultivated by itself.

Cross Int's.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive; you will please state how you know the cultivation was on every part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this, give your means of information.

Ans'r. I never saw the lines of that land run, of my own knowledge I know nothing about them. I was there about a month ago; some of the parties on both sides were present; Mr. Stoddard and Mr. Gilbert, Surveyors, pointed out the corners and designated the lines, and the parties agreed upon the land in dispute. This is all I know about it.

The map referred to has the appearance of being correct. The house I think is not correctly located, but should be south of the line. The field is at (c). I judge that the map is correct, because it corresponds with my knowledge of the lines.

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. This red line here, the south line of the fraction, corresponds to that line of it as designated by Messrs. Stoddard and Gilbert, as I have mentioned before; the house is correctly located here, but a little too far south; the field cultivated by Lindsay in 1838, as before mentioned, is by (c) or near there; the road opposite the house is too far south.

Cross-int'y 3d. Have you examined the land lately? if so, can you

positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned. The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter section now in dispute according to the true lines; state which of these two maps is correct and lays down the correct line, and give your means of determining which is correct; on which side of the line on Sargent's map will the house and cultivated portions lie?

Ans'r. I have examined the land within four or five weeks, as before stated, quite particularly; I saw it yesterday and this morning; I can't swear that Lindsay's house was on this quarter. The cultivation spoken of as made by him, was on this quarter according to the best of my recollection. As I know the line, the map first shown me is not correct, the house stand south of the line; in other respects I think that map is the most correct; I judge from the size of the land as it lays along the bank and from the road.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement or cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation were on the N. E. fr. quarter of sect. 36. Did you then or do you now know personally of your own knowledge, where the true line runs which divides that quarter from the others. If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Ans'r. I have stated that the house built by Lindsay was not on this land, but south of it; if the land acknowledged by the parties to be the land in dispute is the N. E. fr. quarter of sect. 36, then the improvements were on that land. I do not know of my own knowledge where the true lines which divides this quarter from the others. I know nothing about the lines except the information obtained from Stoddard and Gilbert, as I have mentioned; whether that is correct I don't know.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's an adjoining quarter section? If yea, was not that field or a portion of it the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines run, and how you know and now know the lines?

Ans'r. I know nothing about it.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter section by reason and on account of the same house and cultivation referred to? State all you know about it.

Ans'r. I know nothing only from report. I have heard that he intended to get the piece on which the house stands, but that it was floated or pre-empted from him; this was before he lost the piece in dispute.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as ran and fixed by the U. S. Surveyor; and can you say on what quarter the house will be by those lines; and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsay in 1838, or any others, and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption; and was it not a crooked line? State all you know about it.

Ans'r. I know nothing about the government lines or corners, except that I used to see the southeast corner of the fraction, a good many years, pretty soon after the surveys were made, it stood close by the side of the road; one couldn't help seeing it passing there; I don't know that Lindsay ever had a line run for the purpose of proving up his pre-emption; I never heard of it.

JOHN SKINNER.

Subscribed and sworn to before me, this Nov. 26, 1857.

E. T. WELLS, Comm'r.

Mrs. Sarah Skinner, a witness, produced, cautioned, and sworn, as aforesaid, testified as follows:

Int'y 1st. What is your age, place of residence, and occupation, and where did you reside from the year 1836 to 1841?

Ans'r. My age is fifty years next January; I reside at Hampton Township, Rock Island County; I am the wife of John Skinner, the witness last examined. I came to this country in 1837, and resided in the town of Rock Island until the year 1845.

Int'y 2d. Do you know the parties to this controversy?

Ans'r. I do know them.

Int'y 3d. Did you know the late Thomas Lindsay in his lifetime; and if so, how long? And do you know where he resided from the year 1835, to the spring of 1839?

Answ. I was not acquainted with Mr. Lindsay; I became acquainted with the family in 1838, and called at the house once; they were then living in a house which is now standing near the land in dispute, about a mile and a half east of Iowa.

Int'y 4th. Were you from the year 1835 to 1841, or any part of that time, and what, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you do not know the numbers, state if you know the locality.

Answ. I do not know the numbers. I have seen the land in dispute, but don't know the numbers or the lines. From 1837 to 1841, I used to see it occasionally, perhaps once a month, or something like that.

Int'y 5th. Look at the map of the same hereto annexed, marked Exhibit A; state what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either

of them; and what years, if you can remember, and what crops were grown thereon.

Point out on the map, or name on what part of the premises said improvement or cultivation, if any, was situated, and whether on the north or south side of the then travelled road and near the Mississippi River.

Ans'r. I don't know anything about any cultivation on that land in any of those years. I never was at the house but once; never saw any cultivation on that land to my recollection; have heard that they had a garden and raised vegetables, but know nothing about it.

Int'y 6th. State what opportunities you had of seeing the land in dispute during any of those years, and what circumstances remind you of the said improvements or cultivation.

Ans'r. I used to pass up and down the road by that land, but I never noticed any improvements.

Int'y 9th. State what particular circumstances remind you of the crop which grew on the premises.

Ans'r. I know nothing at all about it.

Cross-ex'd.

Cross-int'y 1st. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute; and that there was any part or portion of it cultivated in either of the years from 1836 to 1840, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run; or do you know of your own personal knowledge, anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section; and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Ans'r. I know nothing of any of the matters as to which I am interrogated.

Cross-int'y 2d. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans'r. Witness declines looking at the map, and declares that she knows nothing of the matter.

Cross-int'y 3d. Have you examined the land lately? if so, can you positively swear from personal knowledge, that the house was on this quarter or that any portion of this quarter was in tillage by Thos. Lindsay during the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsay were on this particular quarter-section now in dispute according to the true lines; state which of these two maps is the true

and correct one, and lays down the correct line, and give your means of determining which is correct, on which side of the line on Sargent's maps will the house and cultivated portion lie?

Ans'r. I know nothing about it.

Cross-int'y 4th. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation, were on the N. E. fr. quarter of sect. 36. Did you then, or do you now know personally of your own knowledge where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is corect?

Ans'r. I know nothing about the lines directly or indirectly.

Cross-int'y 5th. Did not Thos. Lindsay rent and cultivate a field of Davenport's, an adjoining quarter-section? If yea, was not that field or a portion of it, the only cultivation ever made by Lindsay on this fractional section? If not, describe when and where he cultivated any other piece, and where the lines ran, and how you knew and now know the lines.

Ans'r. I don't know anything about it.

Cross-int'y 6th. Did not Thos. Lindsay claim a pre-emption on another quarter-section, by reason and on account of this same house and cultivation referred to? state all you know about it.

Ans'r. I know nothing about it.

Cross-int'y 7th. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyor, and can you say in what quarter the house will be by those lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsay in 1838, or any other and what year? Did not Lindsay have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? state all you know about it.

Ans'r. I know nothing of any of the matters spoken of.

Cross-int'y 9th. If you state anything which reminds you of the crops raised any particular year in answer to the 8th, 9th, and 10th, direct interrogatories, please state in what particular quarter-section they were raised, and how you know the quarter-section, and what particular circumstances enable you to tell on what side of the line the crops lay, and how you know where the lines run?

Ans'r. I know nothing of any crops raised as inquired of in direct examination, nor where they were raised.

SARAH SKINNER.

Subscribed and sworn to before me, this Nov. 26, 1857.

E. T. WELLS, Comm'r.

United States of America, Northern District of Illinois.

United States Circuit Court, for Northern District of Illinois, at Chicago.

AUGUSTIN A. LINDSAY et al.
vs.
DAVID HAWES et al.

I, E. T. Wells, a commissioner of said court by virtue of the commission hereto attached, do hereby certify, that by virtue of said commission, I did, on the sixteenth day of November, A. D. 1857, cause to appear before me at my office, in the city of Rock Island, in said northern district of Illinois, to testify on the behalf of the plaintiffs in the above entitled cause, the above named Jonah H. Case, David B. Sears, Abraham Hartzell, Orrin Skinner, Daniel Beal, Daniel Mosher, Sereno Powers, John G. Corbin, Henry Powers, John Tindall, Michael Hartzell, Martha Goyer, Donahoe Williams, John Skinner, and Mrs. Sarah Skinner, and that upon said day, and during all the time of taking said depositions, I was attended by said witnesses, who were of sound mind, and lawful age; and the said witnesses having been by me first duly examined, cautioned, and sworn, to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did severally depose, testify, and say as above set down; and the depositions of said witnesses having been by me reduced to writing in the presence and from the statement of them severally, after carefully reading the same to the said witnesses they subscribed the same in my presence.

I do further certify, that I am not of counsel nor attorney for either of the parties in the said above cause, nor in any way interested in the result thereof. I have retained the said deposition in my possession for the purpose of returning the same by mail into the court for which the same was taken.

In testimony whereof, I have hereunto set my hand and seal, this 14th day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

E. T. WELLS, [SEAL.]
Commissioner.

Endorsed: Opened March 1st, 1858, at request of Judge Scater, Deft's Att'y. WM. H. BRADLEY, Cl'k.

The depositions of John Noel, Roswell H. Spencer, James M. F. Hall, Charles G. Averill, and Sarah Ann Lindsey, taken before me, John Johns, a commissioner duly appointed by the Circuit Court for the Northern District of Illinois, of the United States, in pursuance of the notice hereto annexed, at my office in the city of Davenport, county of Scott, State of Iowa, on the 9th day of December, 1857, and from thence continuing from day to day until said deposition were completed, to be read as evidence in a certain action wherein

Augustus A. Lindsey et al. are plaintiffs, and David Hawes et al. are defendants.

First. John Noel being duly sworn deposeth and saith as follows, in answer to the interrogatories:—

1st interrogatory. What is your age, place of residence, and occupation; where did you reside from 1835 to 1840?

Answer. I am 45 years old; reside in Scott County, Iowa, near the town of Davenport; I am a farmer; I came to Rock Island County, Illinois, in the spring of the year 1835 in company with Thomas Lindsey; I remained in that county about six months, I then moved into Iowa near where I now live, and I have lived near Davenport, Iowa, ever since.

2d interrogatory. Do you know the parties to the suit?

Answer. I know the parties.

3d interrogatory. Did you know the late Thomas Lindsey, of Rock Island County, Illinois? and if so, how long, and do you know where he lived from 1835 to the spring of 1839?

Answer. I knew Thomas Lindsey since the fall of the year 1834, in the State of Pennsylvania; he and I came to Rock Island County in the spring of 1835; when he first came to Rock Island he lived a few days with Jonah Case; he then went into a house belonging to George Davenport which had been an old boarding house; he remained there two or three months; he built a house on the land in dispute soon after, and moved into in the fall of 1835, remained in that house until the spring of 1839, and then moved to the Iowa side of the river near the head of Rock Island, where he died in September of that year.

4th interrogatory. Were you from the year 1835 to the spring of 1839 or any part of that time, and what part, acquainted with the southwest part of the southeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, Illinois, the land in dispute? if you answer that you don't know its numbers, state if you know the locality.

Answer. I do not know that I could call the numbers of it, but I know the locality very well, I saw it surveyed in 1838 before Lindsey got a pre-emption to it; I was in company with a number of persons this fall when the southwest corner of the tract was pointed out by a surveyor, in the presence of both the parties to this suit, and they admitted it to be the land above described.

5th interrogatory. Look at the map of the same hereto annexed, marked exhibit "A," and state whether there was any cultivation or improvement, and what, on said tract of land in the year 1836, 1837, 1838, or either of them, and what years if you can remember, and point out on the map or name on what part of said premises said improvements or cultivation if any was situated, what crops were grown; and state if they were south or north of the then travelled road, and near the river bank.

Answer. There was a small field from one to two acres in culti-

vation in the above tract; I cannot say positively about any year but 1838, I think it was before; I know that it was in cultivation in the year 1838; I pulled flax in that field in that year; the field was located about "a," and the road ran where the letter "b" is marked on the map hereto attached (here the witness marks the place of the field with letter "a"). East of this field was a calf pasture; there was a house on the dividing line of the tract, and the one south, and a blacksmith shop north of the line; this was the house Thomas Lindsey built and moved into in 1835; I do not remember particularly any crop except the flax, though I think there were other crops; the house, the blacksmith shop, were south of the road travelled, the field and the calf pasture were all north of the then travelled road, and near the Mississippi River, and the field was nearer to the bank than the house; I have examined said premises twice this fall, and had the boundaries pointed out to me by two surveyors of Rock Island County; I was a single man, was back and forth middling often, frequently had work in Rock Island County, and was invited to assist in pulling flax; it was a new crop in the country, and attracted every body's attention there.

Cross-interrogatories.

1st Cross-int'y. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1835 to 1838, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge, anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Answer. In the year 1838. I was present the next day after the flax was pulled, when a surveyor, whose name was Joseph Gurner, I think, surveyed the land. There had been, I understood, a doubt expressed on which tract the house was. The surveyor set his compass at the southeast corner of the quarter where there were witness marks on a tree, and I looked through his compass after he got it adjusted, and the line from the southeast corner going west ran through the house, and then placed the blacksmith shop entirely north of it; the place where the compass pointed (on the house), was marked on a stone on the chimmey, and it is yet there. I laid up the chimmey when the house was built, and having pulled the flax the day before, I know the cultivation was on this tract. I did see the line run. I have since had them pointed out to me in the presence of David Barnes and the defendants, by a surveyor, and Mr. Barnes admitted them to be correct representation of the

land and lines. But the road as then travelled was north of the house, and further north than is placed on the map; there was a yard in front of the house before you got to the road. The house was directly on the line, and the field north of the line and west of the house on the other side of a small brook which ran west of the house. I have already given my means of information.

2d Cross-int'y. Look upon the map of the land, as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answer. There is no map of Sargent's survey, and I know nothing of Sargent's survey.

3d Cross-int'y. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Mr. Lindsey during the years mentioned? The true question you are asked to answer is whether the house and the field occupied by Lindsey were on this particular quarter section, now in dispute, according to the true lines; state which of these two maps is the true and correct one and lays down the correct line, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Answer. I have, as I have already stated, examined the land twice this fall in company with a surveyor; and I do state from my personal knowledge, that a part of the house was on this quarter, and that Lindsey cultivated a part of the land, as I have told, in 1838. Lindsey's house and field were on the land in dispute, as it was then surveyed. I don't know anything about true and false lines, and I can make no comparison of maps as Sargent's is not furnished, but I have pointed out the place where the field was, and the house is marked on the map shown me where it was in 1838.

4th Cross-int'y. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation were in the N. E. fr'l quarter of section 36. Did you know or do you now know personally of your own knowledge where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answer. I have already answered this question as fully as I am able.

5th Cross-int. Did not Thomas Lindsey rent and cultivate a field of Davenport's an adjoining quarter section? If yea, was not that field or a portion of it the only cultivation ever made by Lindsey on this fractional quarter? If not, describe when and where he cultivated any, and where the lines run, and how you knew and know the line.

Answer. I think I heard Lindsey say he had raised a field of oats south of this line, that field was not the field or a portion of it which Lindsey cultivated on this tract. The small field where I pulled the flax was on this fraction, and the lines ran south of that small field, and I know where these lines run from the facts I have already stated.

6th Cross-int. Did not Thomas Lindsey claim a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Answer. I have no knowledge that Lindsey claimed any pre-emption on any other quarter section of land on account of this house and cultivation.

7th Cross-int. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by these lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsey in 1838, or any other and what year? Did not Lindsey have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Answer. I can't say that I know anything about the government surveys; I saw a witness tree marked as this one in other government surveys at the southeast corner, and unless that corner was a false one, a part of Lindsey's house and all the field and the shop were both on this quarter as then surveyed; Lindsey owned the house and field which he cultivated. He built the house; I remember the cultivation in 1838; am not positive as to the other years; Lindsey got a line run to find out where the government line run, as he could find it out in no other way; the line which I saw run was a straight line.

8th Cross-int. If the road is not correctly marked down on the map, as asked to say in direct interrogatory 7th, please mark where it ought to be on said plat; and please state, further, if the house and field were not on another quarter, according to the true lines. If you answer that Thos. Lindsey cultivated a field, state whether he did so as, and was he owner of it, or did he rent the field?

Answer. The road on the map is too far south, it lies where I have remarked the line "b" "b" on the map; I know of no other line than what I have mentioned; the field I have spoken of, Lindsey cultivated as owner and was the owner of it; he did not rent it.

9th Cross-int. If you state anything which reminds you of the crop raised any particular year in answer to 8, 9, and 10, direct interrogatories, please state on what particular quarter section they were raised, and how you know the quarter section, and what particular circumstances enable you to tell on what side of the line the crops lay, and how you know where the lines run.

Answer. I have already fully answered this question; the crops

were on this quarter in dispute, and I have given my means of knowledge, and told all I know about it.

10th Cross-int. If you gave the information asked in the 11th direct interrogatory, you will please answer how you knew then, or know now, whether the house and field were on the quarter in dispute. Give your knowledge of the lines, with your means of information.

Answer. I have answered this already.

11th Cross-int. State what relationship there is between you and the heirs of Thos. Lindsey, dec'd, and state whether you are not interested in the event of this suit, and what that interest is.

Answer. I am no relation to the plaintiffs; my brother married Thos. Lindsey's daughter. I have no interest in the event of this suit.

JOHN NOEL.

State of Iowa, Scott County, *set.*

I, John Johns, a commissioner duly appointed by the United States Circuit Court for the Northern District of Illinois, in the cause of Lindsey et al. *vs.* Hawes et al., do hereby certify that the above deposition of John Noel was duly taken, sworn to, and subscribed before me, this 9th day of November, 1857.

JOHN JOHNS, Commissioner.

Second Witness.

Roswell H. Spencer, being duly sworn, deposeth and saith as follows, in answer to the interrogatories:—

1st. What is your age, place of residence, and occupation? Where did you reside from 1835 to 1840?

Answer. I am a farmer by occupation; my age, 49 years; my place of residence, Pleasant Valley, Scott County, Iowa. I resided in my present place of residence from 1835 to 1840, and ever since.

2d. Do you know the parties to this suit? If so, how long?

Answer. I know some of the parties to this suit, not all. I know the Lindsey family, who are claimants to the property in dispute. I know David Hawes and David Barnes.

3d. Did you know the late Thos. Lindsey, of Rock Island County, Illinois? And if so, how long, and do you know where he lived from 1835 to the spring of 1839?

Answer. I did. I was in Rock Island County in the spring of 1835. When Thomas Lindsey came there, I was engaged in farming right back of the present town of Rock Island. Thomas Lindsey lived from 1835 to the spring of 1839 in Rock Island County, Illinois, about a mile and a half above the old town of Stephenson; he lived in a house on the south side of the road running from Stephenson up the river, what was called at the time the Galena road; he had a blacksmith-shop on the same side of the road with his house, a little further west.

4th. Were you from the year 1835 to the spring of 1839, or any

part of that time, and what part, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer that you don't its numbers, state if you know the locality.

Answer. I do not know the numbers of the land, but am well acquainted with the land in dispute; know where the house and shop were, and where the land that was cultivated; the road, as it was travelled at that time, through the field that was cultivated by Thomas Lindsey on the north side of the road, and the house and blacksmith-shop of Lindsey on the south side of the road; there was a little brook that crossed the road between the blacksmith-shop and the field that Lindsey cultivated lay. The field was but a short distance from the river, and I should judge it was where the letter "*a*" is marked on the map hereto attached; if the map is correct as to the house and blacksmith-shop, it was where the letter "*a*" is. I always understood that Thomas Lindsey had settled and pre-empted a fractional quarter section at that time.

5th. Look at the map of the same hereto attached, marked Exhibit "A," and state whether there was any cultivation or improvements, and what, on said tract of land, in the years 1836, 1837, 1838, or either of them, and which years, if you can remember, and point out on the map or name on what part of the premises said improvements or cultivation, if any, were situated, what crops were grown, and state if they were south or north of the then travelled road, and near the river bank.

Answer. I saw a cultivated field on the land in dispute, in which turnips were growing; it was between the road and the river; I mean the old Galena road, running from Stephenson up the river. If the map hereto attached is correct, I should say the field was where the letter "*a*" has been marked; the branch I have spoken of ran across the road, a short distance west of the shop; it, the field, was on the north side of the road; there was a house and blacksmith-shop on the south line of the road, occupied by Thomas Lindsey. This was in 1836 and 1837. I recollect the field from the fact of my getting over the rail fence, in going by, and getting some turnips. The road ran some thirty or forty steps or so from this fence. I was at that time in the constant habit of travelling up and down that road.

1st Cross-int. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or fraction of it cultivated in either of the years from 1835 to 1838, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5 is a correct representation of the lines of that quarter

section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this; give your means of information.

Answer. I know nothing about the lines; but if the map hereto attached is correct, the cultivated field and house and shop of Thomas Lindsey are correctly located. I know it from my knowledge of the localities, the road, the river, and the branch, and the land itself. I do not know where the true boundary line was. I never saw the line run, nor do I know anything more particularly about the lines, except that at the time, I know, he was on the fraction right above Davenport's fraction on the river (I mean Thomas Lindsey's), and his cultivated field was on that fraction above Davenport's fraction. I should say the cultivated field was about fifty rods from Davenport's fence. I know the Davenport fraction well enough. Lindsey's fraction was right east of the Davenport fraction on the river. From what I know of the lines of the Davenport fraction, and of the lines west of it, I should say the map referred to, interrogatory 5th, was a correct map. I was present when the west and south lines of the Davenport fraction were run. I was living on Spencer's pre-emption in the adjoining section, west of section in which Davenport's and Lindsey's fractions were.

2d Cross-int. Look upon the map of this land, as made by Mr. Sargent's survey, now shown you, state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answer. I cannot say that this is Mr. Sargent's map hereto attached, and cannot state how the lines in Mr. Sargent's map are run; but if the map hereto attached is correct, my answer with regard to the position of the cultivated field, house, and shop of Thomas Lindsey, in reply to the direct interrogatories, are correct.

3d Cross-int. Have you examined the land lately? If so, can you positively swear, from personal knowledge, that the house, or that any portion of this quarter, was in tillage by Mr. Lindsey during the year mentioned?

The true question you are asked to answer is, whether the house and field occupied by Lindsey were on this particular quarter section now in dispute, according to the true lines? State which of these two maps is the true and correct one, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Answer. I have not examined the land lately; but I am certain that the cultivated field, cultivated by Lindsey, was on the adjoining fraction to Davenport's fraction, right above on the river; but I am not certain that the house and shop were on the same fraction with the cultivated field. I do not know precisely where the dividing line between the north and south quarter ran, but the house and shop were very near it. As there is only one map attached, I cannot make any comparison.

4th Cross-int. If you state anything positive in answer to direct Interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house improvement and cultivation were on the N. E. fr. quarter of section 36. Did you know, or do you know, personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answer. I am not positive about the house being on that fraction, but I am positive that the cultivated field was on the fractional quarter, to wit, the northeast quarter of section 36. I was living there at the time the surveyors run the lines of Davenport's fractional quarter, and I know that the south line of Davenport's fractional quarter if continued, would run south of the cultivated field of Thomas Lindsey. I have already stated how I obtained this information from personal knowledge, having seen the lines run by the surveyors on the adjoining fractional quarter.

5th Cross-int. Did not Thos. Lindsey rent and cultivate a field of Davenport's, an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsey on this fractional section? If not, describe when and where he cultivated any, and where the lines run, and how you knew and know them.

Answer. I do not know that he did.

6th Cross-int. Did not Thos. Lindsey claim a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Answer. I have already described all I know about the position of Thomas Lindsey's cultivated field, and told all I know about the lines and how I know it.

7th Cross-int. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by those lines, and whether there was any field at all on the N. E. quarter, owned and cultivated by Thomas Lindsey in 1838, or any other and what year? Did not Lindsey have a special line run for the purpose of proving his pre-emption, and was it not a crooked line? State all you know about it.

Answer. I have not. I have already stated I cannot say positively as to the house and shop. I have stated all I know as to the cultivated field. I know nothing about Lindsey's having a crooked line run, or any line whatever.

8th Cross-int. If the road is correctly marked down on the map as asked to say in direct interrogatory 7, please mark where it ought to be on said plat, and please state further, if the house and field were not on another quarter according to the true lines. If you answer that Thos. Lindsey cultivated a field, state whether he did so as, and was he owner of it, or did he rent the field.

Answer. I have not been required to answer interrogatory 7 in direct examination; Thomas Lindsey cultivated the field I refer to, intending to pre-empt it.

9th Cross-int. If you state anything which reminds you of the crops raised any particular year in answer to 8th, 9th, and 10th direct interrogatories, please state on what particular quarter section they were raised, and how you know the quarter section, and what particular circumstances enable you to tell on what side of the line the crops lay, and how you know where the lines run.

Answer. I did not reply to interrogatories 8, 9, and 10, as the questions were not put to me.

10th Cross-int. If you gave the information asked in the 11th direct interrogatory, you will please answer how you know them, or know now whether the house and field were on the quarter in dispute. Give your knowledge of the lines with your means of information.

Answer. I did not answer that interrogatory, not being asked it, consequently I cannot answer the cross-interrogatory.

R. H. SPENCER.

State of Iowa, Scott County, *set.*

I, John Johns, a Commissioner duly appointed by the United States Circuit Court for the Northern District of Illinois, in the cause of Lindsey et al. *vs.* Hawes et al., do hereby certify that the above deposition of Roswell H. Spencer was duly taken, sworn to, and subscribed before me, this 11th day of December, 1857.

JOHN JOHNS, Commissioner.

3d Witness.

James M. F. Hall, being duly sworn, deposeth and saith as follows to the interrogatories:—

1st. What is your age, place of residence, and occupation, where did you reside from 1835 to 1840?

Answer. My age is thirty-seven. Place of residence Davenport. My business has been lumbering, flat-boating, and steam-boating. I resided in Illinois in 1835. In May, 1836, I came to Davenport, and have resided in Davenport, Scott County, Iowa, ever since.

2d Int'y. Do you know the parties to this suit? if so, how long?

Answer. I know the following persons: Augustine A. Lindsey, Susan Noel, Adam Noel her husband, James Lindsey, Eleanor M. Bradley, Horace Bradley her husband, John B. Matthews, and Margaret D. Matthews, and Joseph G. Lindsey. I know David Hawes, John Holt, George M. Babcock; the other parties, plaintiff and defendant, I do not know. I have known the Lindsey family since 1836.

3d. Did you know the late Thomas Lindsey, of Rock Island County, Illinois? and if so, how long? and do you know where he lived from 1835 to the spring of 1839?

Answer. I did. I know the late Thomas Lindsey since 1836.

About the first I knew of him was in June, 1836; he lived in a clapboarded house on the right hand side of the main road as you went up from Rock Island to Moline, just on the road. It was the first house above what is called the Lime Kiln Branch in Rock Island County, Illinois, about forty paces above the Branch.

4th. Were you from the year 1835 to the spring of 1839, or any part of that time, and what part, acquainted with the southwest fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you don't know its numbers, state if you know the locality.

Answer. I know the land in dispute, but I do not know it by its numbers. I know its locality.

5th. Look upon the map of the same hereto annexed, marked Exhibit "A," and state whether there was any cultivation or improvement, and what, on said tract of land in the years 1836, 1837, 1838, or either of them, and which years, if you can remember, and point out on the map or name on what part of the premises said improvement or cultivation, if any, were situated, what crops were grown, and state if they were south or north of then travelled road, and near the river bank.

Answer. I cannot identify the map hereto attached, for though it may be correct as far as the water and bounds are concerned, yet a branch which runs into the Rock Island slough, and the bends of the slough, are not put down on the map. Thomas Lindsey had a field in cultivation and inclosed in 1838, between Davenport's spring and the Lime Kiln Branch, and between the slough and the road. Does not know what crops were grown on that field. This field was north of the road leading from Stevenson up the river, and near the bank of the slough in Rock Island County, Illinois.

8th interrogatory. If you have stated that there was a field inclosed on said premises, what became of the rails, who removed them, and whether they were removed before or after Thomas Lindsey's death?

Answer. I have stated that Thomas Lindsey had a cultivated and inclosed field, and where it was situated; I boated the rails which inclosed said premises over the river to the Iowa side. I think, but am not positive, that the rails were removed after Thomas Lindsey's death.

Cross-interrogatory.

1st Cross-int'y. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or fraction of it cultivated in either of the years from 1835 to 1838, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in in-

terrogatory 5 is a correct representation of the lines of that quarter section; and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Answer. If the land I have described in my answer to the direct interrogatory is the land in dispute, I know that there was a part of it cultivated, from having seen it in cultivation about the year 1838. I know nothing about the lines, nor do I know whether the map referred to in interrogatory 5th is a correct map with reference to the lines, nor do I know whether the house and field are correctly located with regard to the lines on that map.

2d Cross-int'y. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answer. I know nothing about the lines, and cannot speak with regard to the map.

3d Cross-int'y. Have you examined the land lately? If so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Mr. Lindsey during either of the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsey were on this particular quarter section now in dispute, according to the true lines? State which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct. On which side of the line on Sargent's map will the house and cultivated portion lie?

Answer I have not examined the land lately. I know that the house and field were situated on the land described in my answer to the direct interrogatory. I know nothing about the lines. There are no two maps exhibited here, consequently I can make no comparison. I cannot speak with regard to the lines.

4th Cross-int'y. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvement, and cultivation were on the N. E. fr. quarter of sect. 36. Did you know, or do you now know personally, of your own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answer. Direct interrogatory 6th was not propounded to witness; consequently, I cannot answer this cross-interrogatory.

5th Cross-int'y. Did not Thomas Lindsey rent and cultivate a field of Davenport's on adjoining quarter section? If yea, was not that field or a portion of it the only cultivation ever made by Lindsey on this fractional section? If not, describe when and where he culti-

vated any, and where the lines run, and how you knew and know the lines.

Answer. I do not know anything about Thomas Lindsey's renting a field of George Davenport on the adjoining section.

6th Cross-int'y. Did not Thos. Lindsey claim a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it.

Answer. I don't know of Thomas Lindsey's claiming a pre-emption upon this or any other adjoining section.

7th Cross-int'y. Do you know anything the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. Surveyors, and can you say on what quarter the house will be by these lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsey in 1838, or any other and what year? Did not Lindsey have a special line run for the purpose of proving his pre-emption, and was it not a crooked line? State all you know about it.

Answer. I know nothing of the lines, nor do I know of Thomas Lindsey ever having any line run.

Direct interrogatories 7th, 8th, 9th, 10th, and 11th, were not propounded to witness. JAMES M. F. HALL.

State of Iowa, Scott County, *set.*

I, John Johns, duly appointed a commissioner by the United States Court for the Northern District of Illinois, do hereby certify that the above deposition of James M. F. Hall was duly taken, subscribed, and sworn to before me this 11th day of December, 1857.

JOHN JOHNS, Commissioner.

4th Witness. Charles G. Averill, a witness produced, being duly sworn, deposeth, and saith as follows, in answer to the interrogatories.

1st. What is your age, place of residence and occupation? and where did you reside from 1835 to 1840?

Ans. I am thirty-eight years old; reside in Scott County, Iowa; am a farmer.

2d. Do you know the parties to this suit; if so, how long?

Answer. I know the plaintiffs, and have seen most of the defendants.

3d. Did you know the late Thomas Lindsey, of Rock Island County, Illinois, and if so, how long? and do you know where he lived from 1835 to the spring of 1839?

Answer. I did know Thomas Lindsey of Rock Island County. He was a blacksmith, and resided in Rock Island County, on the road between Rock Island and Moline, about one or two miles above the town of Rock Island, from 1835 to 1839.

4th. Were you from the year 1835 to the spring of 1839, or any part of that time, and what part, acquainted with the southwest part

of the northeast fractional quarter of section thirty-six north, range two west, in Rock Island County, the land in dispute? If you say that you don't know its numbers, state if you know the locality.

Answer. I resided in Rock Island County from the year 1834 to the spring of 1839, when I moved into Scott County. I know the locality of the land in dispute, but I do not know the numbers of the land.

5th. Look at the map of the land hereto attached, marked Exhibit "A," and state whether there was any cultivation or improvement, and what, on said tract of land in the years 1836, 1837, 1838, or either of them, and which years, if you can remember, and point out on the map, or name on what part of the premises said improvements or cultivation, if any, was situated; what crops were grown, and state if they were north or south of the then travelled road, and near the river bank.

Answer. Some time the past fall quite a number of persons, myself among the number, were called upon by the plaintiffs to examine the land in dispute, with a surveyor. He pointed out to us the southwest corner of the land in dispute. Mr. Barnes, one of the defendants, was present, and admitted that it was the corner. There was a small field on this land of about an acre, about where the letter "a" is marked on the map. I saw this field in cultivation in the year 1838. East of the field was a calf pasture. There was a house and blacksmith shop; the house is marked on the map about where I suppose it was. The field was north of the then travelled road, and between it and the river; the house was south of the road as then travelled, and I think the blacksmith shop was, but I cannot be positive. Between the house and the field was a small brook, which I should locate at "c." (Witness here marks the map.)

7th. What opportunity did you have of seeing and observing said land during the years 1835, 1836, 1837, and 1838?

Answer. I was in the habit of going to Lindsey's shop frequently, and the house and field were on the road which I travelled when I went to Rock Island.

11th. State what circumstances cause you to remember the improvements and cultivation referred to?

Ans. The only particular circumstance which I now remember is that once, when I was at Lindsey's house, and some of his sons and myself went from his house to the Island, and when we came back we went through the field, and I remember some turnips growing there.

1st cross-interrogatory. If you answer the 4th and 5th direct interrogatories, that you know the tract of land in dispute, and that there was any part or fraction of it cultivated in either of the years from 1835 to 1838, both inclusive, you will please state how the know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge, anything about the lines

of the quarter section? Do you know whether the map referred to in interrogatory 5, is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this, give your means of information.

Answer. I know the place of cultivation from my knowledge of the locality. I have no personal knowledge of the lines and corners, but I was shown the southwest corner in the presence of the parties, and applying their knowledge and information to the map, I have no hesitation in placing the field which was cultivated at or about the letter "a." The field was between the road and the river, and as the road now runs, which is south of what it was in 1838, the southwest corner of the land in dispute is in the road; judging from the position of the house to this corner, the house is on or near the line of this tract of land and the one south of it.

2d cross-int. Look upon the map of this land as made by Mr. Sargent's survey now shown you, and state if you know by personal examination of the line, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Answer. No map is shown, and I can give no answer to this question.

3d Cross. Have you examined the land lately? if so, can you positively swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Mr. Lindsey during the year mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsey were on this particular quarter-section in dispute according to the true lines; state which of these two maps is the true and correct one, and lays down the correct line, and give your means of determining which is correct; on which side of the line on Sargent's map will the house and cultivated portion lie?

Answer. I have examined the land this fall, and unless the map is a false one, and the wrong corner was pointed out to me, the cultivation was upon this land, and the house and shop on the line or near it. I know nothing about true or false lines, but I know where the field was and the house also; I can go right to the spot where the field was, and the house is there yet; the shop is gone, but it was a little west and north of the house, and they were both east of the brook.

4th Cross-int. If you state anything positive in answer to direct interrogatory 6th, which reminds you of the improvement and cultivation, state also what fact or circumstance enables you to swear that the house, improvements and cultivation were on the N. E. fr. quarters of sect. 36. Did you know or do you now know personally of our own knowledge, where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answer. I believe that I have already answered this interrogatory as fully as I am able.

5th Cross-int. Did not Thos. Lindsey rent and cultivate a field of Davenports' on an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsey on this fractional section? If not, describe when and where he cultivated any, and where the lines run, and how you knew and know the lines?

Answer. I have no knowledge of Lindsey's renting a field of Davenport; he did not rent the field I speak of of Davenport. That field was in the land in dispute, unless the wrong corner was shown to me, and without seeing any corner, the distance between the field and house was so short, and the field was on the north side of the road, that unless the house was some distance south of the line, the field was on the land in dispute.

6th Cross-int. Did not Thomas Lindsey claim a pre-emption on another quarter section by reason and on account of this same house and cultivation referred to? State all you know about it?

Answer. He did not that I know of.

7th Cross-int. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by these lines, and whether there was a field at all on the N. E. quarter owned and cultivated by T. Lindsey in 1838, or any other, and what, year? Did not Lindsay have a special line run for the purpose of proving his pre-emption, and was it not a crooked line? State all you know about it.

Answer. I know nothing of the government surveys of this land. I have already answered as fully as I know the balance of this question.

8th Cross-int. If the road is not correctly marked down on the map as asked to say in direct interrogatory 7, please mark where it ought to be on said plat, and please state further if the house and field were not on another quarter according to the true lines. If you answer that Thomas Lindsey cultivated a field, state whether he did so as and was he owner of it, or did he rent the field?

Answer. I do not remember that I said anything about the road, but I think the road in 1838 ran where it is marked on the map (Exhibit A) "b," "b," "b." I have answered the balance of this question as fully as I can.

9th Cross-int. If you state anything which reminds you of the crops raised any particular year in answer to 8, 9, and 10 direct interrogatories, please state on what particular quarter section they were raised, and how you know the quarter section, and what particular circumstances enable you to tell on what side of the line the crops lay, and how you know where the lines run.

Answer. I have answered this question as fully as I can.

10th Cross-int. If you give the information asked in 11th direct

interrogatory, you will please answer how you knew them or know now whether the house and field were on the quarter in dispute. Give your knowledge of the lines with your means of information.

Answer. I have already answered this question as fully as I can.

C. G. AVERILL.

State of Iowa, Scott County, *sct.*

I, John Johns, a commissioner duly appointed by the United States Court for the Northern District of Illinois, in the cause of Lindsey *vs.* Hawes et al., do hereby certify that the above deposition was duly taken, and subscribed and sworn to by Charles G. Averill, on this 15th day of December, 1857, before me.

JOHN JOHNS, Commissioner.

5th Witness.

Sarah Ann Lindsey being produced and being duly sworn, deposeth and saith as follows, to the interrogatories.

1st. What is your age, place of residence, and occupation; where did you reside from 1835 to 1840?

Answer. I am in my sixty-seventh year. I reside near Davenport, Scott County. I am a widow woman, living with one of my sons.

2d. Do you know the parties to this suit, if so, how long?

Answer. I know the plaintiffs, and know the defendants Hawes and Barnes. Hawes by representation, Barnes I am acquainted with.

3d. Did you know the late Thos. Lindsey, of Rock Island County, Illinois, and if so, how long; and do you know where he lived from 1835 to the spring of 1839?

Answer. Thomas Lindsey, formerly of Rock Island County, Illinois, was my husband; I knew him some time before our marriage; in the spring of 1835 my husband and family came to Rock Island County, Illinois; for a few days we stopped at a house belonging to Jonah Case; and then went to a house belonging to Mr. George Davenport, called the Forman House, an old boarding-house; we staid there until the last of August or first of September, 1835, when we moved into a house built by my husband near the Mississippi River, on a claim he bought of Mr. George Davenport; he remained in that house, which is now where it was built, until the spring of 1839, when he moved on to the Iowa side of the river to a house belonging to Doctor Emerson, near the head of Rock Island, where he died on the 14th of September, 1839.

4th. Were you from the year 1835 to the spring of 1839, or any part of that time, and what part, acquainted with the southwest part of the northeast fractional quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? if you answer that you don't know its numbers, state if you know the locality.

Answer. I know the land in dispute, but I don't know anything about the numbers of it, and I have known it from 1835 to this time.

5th. Look at the map hereto annexed, marked "A" exhibit, and state whether there was any cultivation or improvements, and what, on said tract of land in the years 1836, 1837, 1838, or either of them, and which years if you can remember, and point out on the map or name what part of the premises said improvements or cultivation, if any, was situated. What crops were grown, and state if they were north or south of the then travelled road?

Answer. On the map referred to the field which was cultivated was about where the letter "a" is. East of the field was a small pasture, and east of that was a cow pen; the field was cultivated in 1836, 1837, and 1838; there was a crop of turnips, a crop of potatoes, and a crop flax, and we cultivated garden vegetables there; we also had a good many little fruit trees there on it, seedlings, but they did not come to much, and were mostly eaten down and destroyed. The house which my husband built, and where we lived, was about where it was placed on the map; that which is marked as a stable was a blacksmith's shop; the house and blacksmith's shop were both on the south side of the road from Rock Island or Stephenson, as it was then called, to Moline, and west of them was a small brook. The cow-pen, pasture, and field were west of the brook, and on the north side of the road.

7th. What opportunity did you have for seeing and observing said land during the years 1835, 1836, 1837, 1838?

Answer. I lived in the house; I used the field and worked in it.

9th Int. What relation are you to Augustine Lindsey, Susan Noel, James Lindsey, Eleanor M. Bradley, Margaret D. Mathews, and Joseph Lindsey? If you say you are their mother, state when each of them was born, and whether or not they are the heirs of Thomas Lindsey.

Answer. I am the mother of Augustine A. Lindsey, Susan Noel, James Lindsey, Eleanor M. Bradley, Margaret D. Matthews, and Joseph I. Lindsey. Susan, the eldest, was born on the 15th of December, 1815, James Lindsey was born on the *the* 4th of May, 1817, Eleanor M. Bradley was born on the 30th of August, 1820, Margaret D. Matthews on the 25th of October, 1822, Joseph S. Lindsey on the 7th of June, 1829, and Augustus A. Lindsey on the 29th of September, 1831. They are the heirs of Thomas Lindsey.

10th. State when your late husband first removed to Rock Island County. In what house he first lived, to what house he next moved, and who built it, and what was his business, and how long he lived at that place, whether or not he proved a pre-emption on it, where he moved to, and where he died?

Ans. My husband first removed to Rock Island County in 1835; he staid a few days with Mr. Jonah Case, and then rented Mr. Davenport's house, as I have stated; my husband built and moved

into the house about half a mile above in the fall of 1835. He was a blacksmith by trade. He lived in this last named house until the spring of 1839; he proved a pre-emption to the land in dispute in the spring of 1839. He moved into Iowa, and died in the fall of that year.

11th. State what circumstances cause you to remember the cultivation and improvement referred to.

Answer. I could hardly tell all the circumstances which cause me to remember the improvements and cultivation; when a body lives on a place for years, they are not apt to forget it, or that they worked on it.

Cross-Interrogatory.

1st Cross-int'y. If you answer the 4th and 5th direct interrogatories that you know the tract of land in dispute, and that there was any part or fraction of it cultivated in either of the years from 1835 to 1838, both inclusive, you will please state how you know the cultivation was on any part of this land. Do you know where the true boundary line runs? Did you ever see the line run, or do you know of your own personal knowledge anything about the lines of the quarter section? Do you know whether the map referred to in interrogatory 5, is a correct representation of the lines of that quarter section, and that the house and field are correctly located in respect to the lines? If yea, state how you personally know this. Give your means of information.

Answer. I do not know anything about the lines or corners of the land in dispute. I know the location of the ground. I know the place where the field was, and the house is now standing. I never saw the lines run. I don't know, from my personal knowledge, anything about the lines of the quarter. The map referred to looks like the ground did at that time; shows the bend in the river, and the house just opposite to that bend and close to the river; and it has a road on it, with the house on one side and the field on the other.

2d Cross-int'y. Look upon the map of this land, as made by Mr. Sargent's survey, now shown you, and state if you know by personal examination of the lines, how the house or any cultivated portion lies to the lines as fixed by Mr. Sargent.

Ans. No map is with the interrogatories.

3d Cross-int'y. Have you examined the land lately? if so, can you personally swear from personal knowledge that the house was on this quarter, or that any portion of this quarter was in tillage by Mr. Lindsey during the years mentioned? The true question you are asked to answer is, whether the house and field occupied by Lindsey were on this particular quarter section now in dispute, according to the true lines. State which of these two maps is the true and correct one, and lays down the correct line; and give your means of determining which is correct; on which side of the line, on Sargent's map, will the house and cultivated portion lie.

Answer. I have not examined the land lately. I cannot answer anything about lines; can't say which is the true line and which not; can't say anything about the correctness of one map over the other.

4th Cross-int'y. If you state anything positive in answer to direct interrogatory 6th which reminds you of the improvement and cultivation, state also what fact or circumstances enable you to swear that the house, improvement, and cultivation, were on the N. E. frac. quarter of sect. 36. Did you know, or do you know now, personally of your own knowledge where the true line runs which divides that quarter from the others? If you know these lines only from information of others, who gave you the information as to where the lines run, and do you know whether that information is correct?

Answer. I could not describe the land by numbers. I know nothing about the lines and corners; I have described the house and field, and you must form your own opinion from the description.

5th Cross-int'y. Did not Thomas Lindsey rent and cultivate a field of Davenport's, on an adjoining quarter section? If yea, was not that field, or a portion of it, the only cultivation ever made by Lindsey on this fractional section? If not, describe when and where he cultivated, and where the lines run, and how you knew and know the lines.

Answer. My husband rented a part of Mr. Davenport's field, which was west of my husband's claim and south of the house called the Farnam House, this was in 1836 or 1837; but this field was not the field or *truck* patch which my husband owned and cultivated, the two fields were entirely separated and a road ran between them, and the field which my husband cultivated was north of the road, and east of Davenport's field, and on the west side of the brook near our house.

6th Cross-int. Did not Thomas Lindsey claim a pre-emption on another quarter section, by reason and on account of this same house and cultivation referred to? State all you know about it.

Answer. He did not.

7th Cross-int. Do you know anything about the government surveys of this tract? Have you examined the lines and corners as run and fixed by the U. S. surveyors, and can you say on what quarter the house will be by those lines, and whether there was a field at all on the N. E. fr. quarter owned and cultivated by T. Lindsey in 1838, or any other, and what year? Did not Lindsey have a special line run for the purpose of proving up his pre-emption, and was it not a crooked line? State all you know about it.

Answer. I know nothing of the government surveys, and can say nothing about the lines and corners. I know nothing about the line being run by my husband. I heard that a survey was made which placed a part of our house on the land to which my husband proved a pre-emption, but I know nothing about it.

8th Cross-int. If the road is not correctly marked down on the

map as asked to say in direct interrogatory 7, please mark where it ought to be on said plat, and please state further if the house and field were not on another quarter according to the true lines. If you answer that Thos. Lindsey cultivated a field, state whether he did so as, and was he owner of it, or did he rent the field.

Answer. I have not said anything about the road; there seems to be two roads on the map A, that which is marked 'b' 'b' 'b' 'b' is more like the road as it was when we lived there. I can't tell on what quarter the house and field were by numbers; the field which I have spoken of west of the bank and north of the road was owned by my husband and he did not rent it.

9th Cross-int. If you state anything which reminds you of the crops raised any particular year in answer to 8, 9, and 10 direct interrogatory, please state on what particular quarter section they were raised, and how you know the quarter section, and what particular circumstances enable you to tell on what side of the line the crops lay, and how you know where the lines run.

Answer. I have answered this question as fully as I know how.

10th Cross-int. If you gave the information asked in the 11th direct interrogatory you will please answer how you know them and whether the house and field were on the quarter in dispute? Give your knowledge of the lines with your means of information.

Answer. I have also answered this question as well as I can.

11th Cross-int. State what relationship there is between you and the heirs of Thos. Lindsey, dec'd, and state whether you are not interested in the event of this suit, and what that interest is.

Answer. I am the mother of Thomas Lindsey's heirs. I have no interest in the result of this suit. I gave my children a release or quit-claim before this suit was commenced, and I have recently given another which is hereto annexed and marked Exhibit B.

SARAH A. LINDSEY.

State of Iowa, Scott County, *set.*

I, John Johns, a commissioner duly appointed by the United States Circuit Court for the Northern District of Illinois, in the cause of Lindsey et al. *vs.* Hawes et al., do hereby certify that the above deposition of Sarah A. Lindsey, was duly taken, subscribed, and sworn to before me this 17th day of December, 1857.

JOHN JOHNS, Commissioner.

(For plat marked Exhibit "A" see original, page 355.)

Exhibit "B."

Know all men by these presents, that I, Sarah Ann Lindsey, widow of Thomas Lindsey, deceased, formerly of Rock Island County, Illinois, for the consideration of one dollar, have remised, released, and forever quitted-claim, and by these presents do remise, release, and forever quit-claim, unto my children, Susan Noel, James Lindsey,

Eleanor M. Bradley, Margaret D. Matthews, Joseph T. Lindsey, and Augustine A. Lindsey, all my right, title, and interest to the southwest part of the northeast fractional quarter of section thirty-six, in township eighteen north, range two west, in the county of Rock Island, and State of Illinois, being the same land on which my husband obtained a pre-emption.

To have and to hold the said tract of land, and all my interest therein, whether at law or in equity, unto the said Susan Noel, Eleanor M. Bradley, Margaret D. Matthews, James Lindsey, Joseph T. Lindsey, and Augustine A. Lindsey, their heirs and assigns forever.

Given under my hand and seal this 28th of September, A. D. 1857. S. A. LINDSEY. [SEAL.]

State of Iowa, County of Scott.

Be it remembered, that on the 28th of September, 1857, came before the undersigned, a notary public in and for Scott County, Iowa, Sarah Ann Lindsey, to me personally known as the identical person who executed the foregoing deed as grantor, and acknowledged the same to be her voluntary act and deed, for the uses and purposes therein named.

Given under my hand and seal notarial, this the 28 of September, A. D. 1857.

[SEAL.] JAMES GRANT, N. P. Scott Co.

(Endorsed): Opened March 1st, 1858, at request of Judge Scates, def't's att'y. WM. H. BRADLEY, Clerk.

Deposition of witnesses produced, sworn, and examined on the fifteenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, at the office of James M. Allan, in the town of Geneseo, county of Henry, and State of Illinois, by virtue of a commission issuing from the Circuit Court of the United States for the Northern District of Illinois, to James M. Allan, of Geneseo, Henry County, Illinois, directed, for the examination of witnesses in a certain cause depending in said court, wherein Augustine A. Lindsey, Susan Noel, Adam Noel her husband, James Lindsey, et al., are the plaintiffs, and David Hawes, John Holt, Jacob Norris, William L. Lee, et al., are the defendants.

Adam Hooker, of the age of thirty-nine or thereabouts, being produced, sworn, and examined in this cause, deposeth as follows:—

Interrogatories of the Plaintiffs.

1st. What is your age, place of residence, and occupation, and where did you reside from 1836 to 1840?

Answer. I am nearly thirty-nine years of age, my place of residence is in Henry County, Illinois, and my occupation is that of farming. I resided from 1836 to 1840 where is now situated the town of Moline.

2d. Did you know the late Thomas Lindsey during his lifetime; and,

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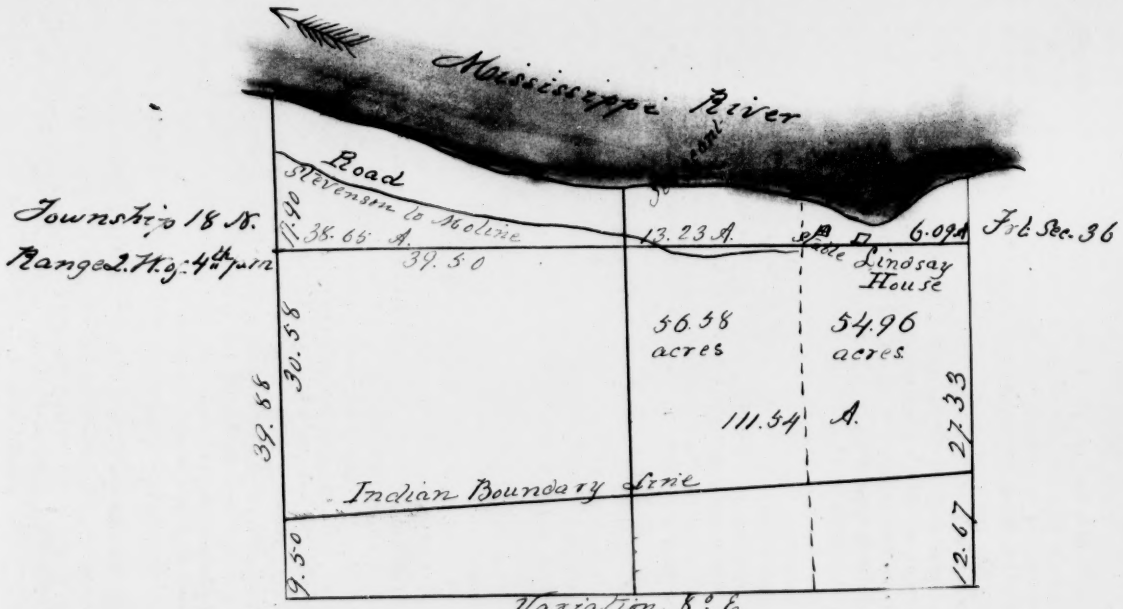


Exhibit A.

if so, how long; and do you know where he lived from 1835 to the spring of 1839?

Answer. I knew Thomas Lindsey from 1836 to the time of his death; I knew him four or five years. I know where he lived from 1836 to 1839.

3d. Were you from the year 1835 to 1839, or any part of that time, and what, acquainted with the southwest part of the northeast fr'l quarter of section thirty-six, township eighteen north, range two west, in Rock Island County, the land in dispute? If you answer you do not know it by its numbers, state if you know its locality.

Answer. I do not know the land in dispute by its numbers; I know its locality.

4th. Look at the map of the same hereto annexed, marked Exhibit "A." State what cultivation or improvement there was on said tract of land in the years 1836, 1837, 1838, 1839, 1840, or either of them, and which years, if you can remember, and what crops were grown thereon. Point out on the map, or name on what premises, said improvements or cultivation, if any, were situated, and whether on the north or south side of the then travelled road, and near the Mississippi River.

Answer. In the years 1836, 1837, 1838, there was one acre of ground, or thereabouts, in cultivation on said tract; in the year 1836, turnips were grown on said tract; in the year 1837, potatoes were grown thereon; in the year 1838, flax was raised on said tract. The said acre of ground is situated at the west end of the Lindsey tract, north of the old travelled road, and between the road and the Mississippi River, and on the bank of the river.

5th. State what opportunities you had of seeing the land in dispute during any and each of those years, and what circumstances remind you of the said improvements and cultivation, if any.

Answer. I lived within one mile and a quarter of the land in dispute during the years 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, and passed there sometimes as many as eight times a day teaming. I passed there very often during the years 1836, 1837, and 1838. In the year 1836, I frequently stopped and got turnips to eat when passing by, on invitation of Mr. Lindsey. I recollect distinctly seeing the potatoes growing there in the year 1837, and the crop of flax which grew there in 1838, was the only crop of the kind I had seen before or since grow in Rock Island County.

Cross-Interrogatories.

1st. If you answer the 3d and 4th direct interrogatories that you know the tract of land in dispute, and that there was any part or portion of it cultivated in either of the years from 1835 to 1839 inclusive, you will please state how you knew and how you now know and can identify the lines so as to state positively that the house and cultivation are on this tract.

Answer. What I do know is what the County Surveyor told me. The surveyor and myself were one day during those years going along the road by Lindsey's house, and the surveyor told me that the south line of said tract now in dispute struck one chimney of the house, and showed me the mark of the south line on the chimney. I only know the lines from the statements of the County Surveyor, and from general statements. The County Surveyor of Rock Island County showed me the west line of said tract this last fall, I think, in November, 1857. There was thirty or forty people there at the time last mentioned. Mr. Baxter, who was County Surveyor of the county of Rock Island in the year 1838 or thereabouts, showed me the southeast corner of said tract, and how the lines run from that corner.

2d. Do you know where the true boundary line between this tract and the adjoining tract runs? Did you ever see this line run, or do you know of your own knowledge anything of this line?

Answer. I know nothing more than what I have already stated. I never saw any of the lines run. I know nothing more than as already stated.

3d. Do you know whether the map shown you and referred to in the direct interrogatory is correct? Look upon this other map now shown you, copied from the survey made by Mr. Sergeant, and state if you can tell from it on which side of the line the house and cultivation would be. State which map is correct, and give your means of determining which is the true line and correct map.

Answer. From my knowledge of the tract of land in dispute I would say the map is about correct. My knowledge of the lines was had of the County Surveyors, and from my knowledge of the ground, the road, and river, I think the map exhibited on the direct-examination is about right.

4th. Have you examined the lands and lines lately with reference to the location of the house and cultivated field referred to after examining the maps, the lines on the ground, and the locality of the house and field? Can you swear that either is upon the tract in dispute? Can you so swear without a recent examination since the brush is cut down and the land cleared up?

Answer. According to statements made me by the different County Surveyors, as I have before stated, I can swear that the cultivated field and most of the house was on the tract in dispute. The house is still standing, or was at the time I examined the tract this last fall, where it stood when Baxter, the County Surveyor, showed me the south line, if Baxter was correct in showing me the south line and southeast corner. I know that the most of the house was on the tract in dispute. This last fall I was requested to go down to Rock Island, and, after there, was asked to go out and see the lines and corners of this land now in dispute. I went out with others to see the southwest corner and west line of the same tract. The County Surveyor, and also another surveyor, were there with many

others, and also parties who claimed to own both sides of the west side of this disputed tract. The surveyors pointed out the southwest corner and west line of this tract in dispute. I have no doubt about the location of the cultivated field if the lines were rightly traced by the County Surveyor this fall, and admitted by the parties interested to be correct at that time. I can say the cultivated field was on this disputed tract.

5th. Did you ever see the lines run out by a surveyor? if so, by whom, and where? Did you then or do you now know where the true line is with reference to this house and cultivation spoken of? If you answer affirmatively, give the particular facts and circumstances which enable you to locate the true line on the ground. If your knowledge of the lines and where they run upon the land is and was derived from information of others, who gave you that information?

Answer. I have not seen them run; some of the lines have been pointed out to me and others by the county surveyors. Baxter and the present county surveyor of Rock Island County I do not know; Baxter showed me the southeast corner and where south line struck the chimney of the house years ago; the county surveyor this fall showed me and others the southwest corner and where west line runs; all I know with regard to the lines with reference to the house and cultivated field, I have several times stated.

6th. What years did Mr. Lindsey rent land of Davenport, and was not the land so rented of Davenport all the land cultivated by him near those premises, and was not the land referred to in the direct interrogatory as having been cultivated, so cultivated as tenants of Davenport? state all you know about this.

Answer. I don't know anything about his renting land of Davenport; the land mentioned by me as cultivated by Lindsey on the disputed tract I never heard was rented of Davenport; I know nothing of Lindsey renting land of Davenport.

7th. Did not Lindsey claim a pre-emption on another and different piece than the one in dispute here by reason of this same house and cultivation? state all you know about this.

Answer. Not that I know of, that's all I know about it, don't know anything of his claiming any other piece.

8th. Do you know anything about the government surveys of this tract? have you examined the lines and corners as run and fixed by the United States Surveyors, and can you say on what quarter the house will be by those lines; can you say from a knowledge of those lines that there was a field owned and cultivated on this particular fraction in dispute in 1838 or any other year?

Answer. I know nothing more about the survey than what I have already stated; I don't know anything more about the United States surveys than what has been stated; I cannot give any more information about the location of the house than already given;

Lindsey did have a small field in cultivation on the particular fraction in dispute in the years 1836, 1837, and 1838.

9th. Did not Lindsey have a special line run for the purpose of proving up a pre-emption, and was not that line crooked? state all you know about this.

Answer. I never heard or knew of Lindsey's having a special line run for any purpose; Baxter told me he run the lines in accordance with the United States surveys.

Since the examination of the witness on the 3d cross-interrogatory, a map has been received which is attached to the papers in this case, and witness re-examined on the 3d cross-interrogatory.

3d. Do you know whether the map shown you and referred to in the direct interrogatory is correct? Look upon this other map now shown you, copied from the surveys made by Mr. Sergeant, and state if you can tell from it on which side of the line the house and cultivated would be, state which map is correct, and give your means of determining which is the true line and correct map.

Answer. The house, as marked on the map now shown me, is south of the line, and the field cultivated is north of the line. I think the map first shown me on the direct interrogatory is the most correct. It is my impression that Baxter told me in 1838 or thereabouts some of the government corners were then standing. He did tell me that he ran this disputed line according to the U. S. survey, and showed me where the line struck the chimney, which left the most part of the house on this disputed fractional quarter.

C. A. HOOKER.

State of Illinois, Henry County.

This certifies that the papers hereto attached, and signed at the bottom of each sheet Adam Hooker, were sworn to and subscribed by said Adam Hooker, at Geneseo, Henry County, Illinois, on the fifteenth day of December, A. D. 1857.

JAMES M. ALLAN, Commissioner.

(For map, marked Exhibit "A," see original, page 368.)

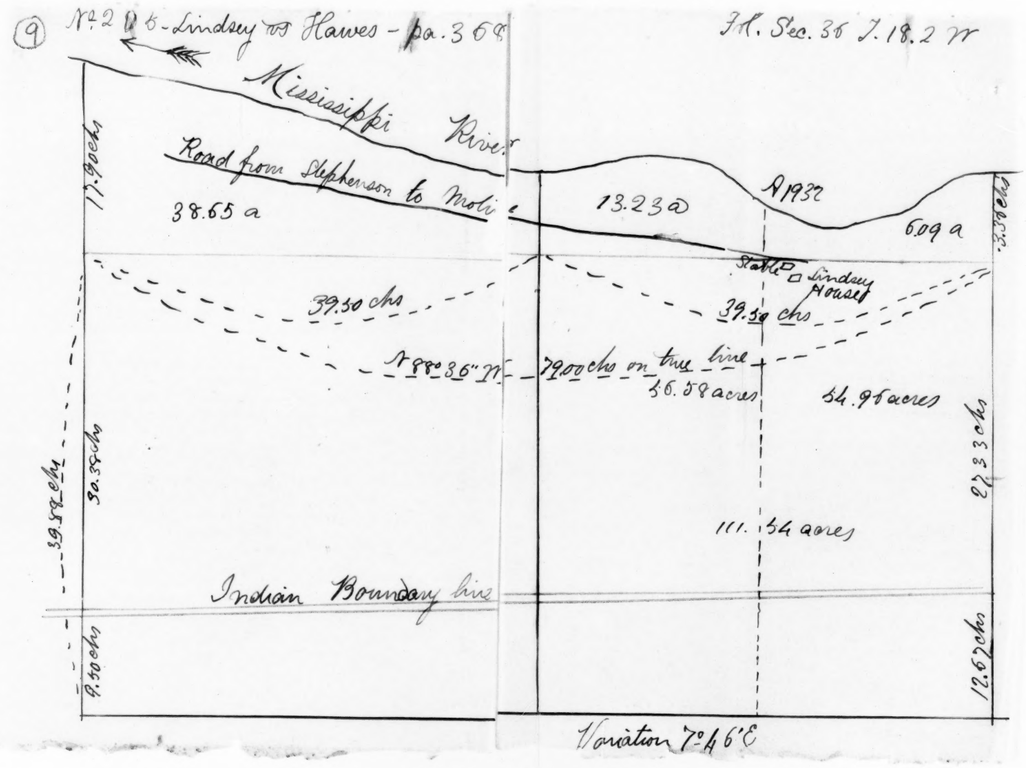
Map referred to in 3d Cross-interrogatory (below).

(For map, see original, page 368.)

(Indorsed) Opened March 1st, 1858, on request of Judge Scates, def't's att'y. WM. H. BRADLEY, Cl'k.

AUGUSTIN A. LINDSAY et al.
ads.
DAVID HAWES et al.

The above case pending in the United States Circuit Court for the Northern District of Illinois, it is hereby agreed between the parties to waive notice, and proceed to take the depositions of such witnesses


(9) N.2 W.6 - Lindsey W. Hawes - pa. 368
N.E. Sec. 36 T. 18.2 W
Mississippi River
Road from Stephenson to Mobile
17.9 chs
38.65 a
13.23 a
A 1932
609 a
Lindsey House
39.50 chs
N 88° 36" W
79.00 chs on true line
36.58 acres
54.95 acres
30.38 chs
39.50 chs
111.54 acres
27.33 chs
Indian Boundary line
9.50 chs
12.6 chs
Variation 7° 46' E

9

as may be produced in behalf of either plaintiffs or defendants, before E. T. Wells, Esq., commissioner, at his office in Rock Island.

JAMES GRANT, for Compl'ts.
JOS. KNOX et al., for Def'ts.

United States of America, Northern District of Illinois.

Be it remembered, that on this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, I, E. T. Wells, a commissioner duly appointed by the Circuit Court of the United States for the Northern District of Illinois, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United State," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did cause personally to appear before me, at my office in the city of Rock Island, in said Northern District of Illinois, to testify on the part of David Hawes and other parties, defendants in the certain cause depending in the said Circuit Court of the United States for Northern District of Illinois, at Chicago, wherein Augustin A. Lindsay et al. (heirs of Thomas Lindsay, deceased) are plaintiffs, and David Hawes et al. are defendants, George B. Sargent, Patrick Gregg, Amos Stillman, Thomas Biddison, Edward D. Gilbert, John A. Boyer, William Bell, William Frizzell, Hibbard Moore, Samuel Bowles, Daniel Pagin, Jacob Sailor, and Joseph Johnston.

And the said George B. Sargent, Patrick Gregg, Amos Stillman, Thomas Biddison, Edward D. Gilbert, John A. Boyer, William Bell, William Frizzell, Hibbard Moore, Samuel Bowles, Daniel Pagin, Jacob Sailor, and Joseph Johnston were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid. I carefully examined the said George B. Sargent, Patrick Gregg, Thomas Biddison, Amos Stillman, Edward D. Gilbert, John A. Boyer, William Bell, William Frizzell, Hibbard Moore, Samuel Bowles, Daniel Pagin, Jacob Sailor, and Joseph Johnston, and they did thereupon severally depose and say as follows:—

George B. Sargent, a witness produced, cautioned, sworn as aforesaid, testified as follows, to wit:—

Interrogatory 1st. What is your age, occupation, and place of residence, and how long have you resided there?

Answer. I am thirty-nine years of age. I reside in Davenport; have resided in that county since 1837. My occupation is that of a banker and dealer in lands.

Int'y 2d. How long has that been your occupation, and what was your occupation previous to that time?

Answer. I have been in that business about ten years. During a part of that time I have held the office of surveyor-general for the Territories of Iowa, Wisconsin, and Minnesota. I was a United States deputy surveyor in the year 1844, and was for three or four years, embracing that period.

Int'y 3d. Have you ever surveyed fractional section thirty-six, township eighteen (18) north, range two west of the fourth P. M., in Rock Island County, Illinois? And if so, when and by whose request?

Answer. I have surveyed that tract; it was some time in the year 1844, under the direction of the surveyor-general for Illinois and Missouri. I made a plat of that survey, and returned it with the field-notes to the surveyor-general's office at St. Louis.

N. B.—The plaintiffs agree that the copy of Sargent's survey and field-notes, certified by Lorybonough, surveyor-general, and now filed in this case, is a correct copy of the survey and field-notes of the witness, above referred to by him, and may be read in evidence.

JAMES GRANT, Pl'ffs' Attorney.

Int'y 4th. With what care was that survey made?

Answer. I was executing it under oath, and took all possible pains to make it accurate, the more so for the reason that it was a *resurvey*. I determined to have it accurate. I determined the variation at which these lines should be run according to my instructions from the surveyor-general's office. I found both the original quarter section corners on the east and west boundary lines of frac. sec. 36; re-established them, as stated in my field-notes. Mr. James Lindsey, one of the plaintiffs in this suit, was my flag-bearer at the time I made the survey referred to.

Cross-exam'd.

X-int'y 1st. Can you testify in any manner, at this distant day, except from your plat and field-notes, as to the manner in which you made the survey?

Answer. I have been governed in all my answers by a copy of my field-notes. All that I have sworn to is contained in them. My recollection of the facts, however, is refreshed by looking at the field-notes.

X-int'y 2d. The variation at which all government surveys are made is always east, is it not?

Answer. It is.

GEO. B. SARGENT.

Subscribed and sworn to before me, this July 28th, 1857.

E. T. WELLS, Comm'r.

Patrick Gregg, a witness, produced, cautioned and sworn as aforesaid, testified as follows, to wit:—

Int. 1st. What is your age, occupation, and place of residence, and how long have you resided there?

Answer. I am forty-seven years of age; I live in Rock Island, Rock Island County, and have resided there since the year 1836. I am a physician by profession, and at present mayor of Rock Island.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of fractional section (36) thirty-six, township eighteen north, range two west of the fourth P. M., in said Rock Island County?

Answer. I am acquainted with that tract.

Int'y 3d. From the time you came to the county in 1836 to 1840, what improvements, if any, were on that land?

Answ. I do not recollect of having ever seen any improvements on that land.

N. B. The plaintiffs object to evidence as to any improvements except the house of the late Thos. Lindsay, on the ground that the same is not put in issue by defendants' answer.

Int'y 4th. Were you, prior to 1840, frequently upon this land and in the neighborhood in the practice of your profession, so as that if there had been improvements on those premises you would have noticed them?

Answer. I was in that neighborhood frequently and on the land occasionally. I do not recollect having ever seen any improvements between Thos. Lindsey's house and the river.

Int'y 5th. Were you acquainted with the location of the house occupied by Thos. Lindsey between the years 1835 and 1839?

Answer. I was his family physician.

Int'y 6th. State what you know as to the occupation of this land by Mr. David Hawes; at what time did he take possession of it?

[Objected to by pl'ffs' counsel.]

Answer. I can't think the year in which he took possession of that land.

Int'y 7th. Who beside Mr. Hawes have been in possession of these premises, or any part of them, since Mr. Hawes took possession of them?

Answer. Mr. David Barnes, William Randall, Jacob Norris and William L. Lee and Mr. Jacks have at different times held parts of this land since Hawes first took possession of it.

Cross-examined by Judge Grant.

X-int'y 1st. What do you mean by saying that these men have held this land?

Answ. They have lived on it, improved it, and have been reputed to own it.

X-int'y 2d. What parts of it have these men been in possession of, and when?

Answer. I should think that Mr. Hawes was there as early as 1845. I can't fix the year when he left it. I should think not more than three or four years ago. Soon after Mr. Hawes got his pre-emption he disposed of a part of it to Mr. Norris, but what portion

I don't really remember; but I should think the part which Mr. Norris afterwards sold to Mr. Lee, being the west portion.

P. GREGG.

Subscribed and sworn to before me this July 28th, 1857.

E. T. WELLS, Comm'r.

Thomas Biddison, a witness, produced, cautioned and sworn as aforesaid, testified as follows, to wit:—

Int'y 1st. What is your age, occupation, and place of residence; and how long have you resided at said place?

Answ. I am forty-six years of age; I reside at Rock Island, Rock Island County; have resided there since 1836. I am a carpenter and builder by occupation.

Int'y 2d. Are you acquainted with the southwest part of the north-east quarter of frac. section thirty-six (36), township eighteen north, of range two west of the fourth P. M., the tract of land in dispute between the heirs of Thomas Lindsay and Hawes and others?

Answer. I never knowed any land that Mr. Lindsay lived on in the north half of that section. I know the land. I know from the map where the land lies, and knew where Mr. Lindsay lived, but didn't pay much attention to the lines then.

Int'y 3d. Was there any cultivation on any part of said land between 1836 and 1840?

[Objected to by pl'ffs' att'y.]

Answer. I couldn't say about 1840; I can say that there was none up to the time Hawes and Norris got it. I never saw anything cultivated there. I was frequently upon this land.

Int'y 4th. Was there any inclosure up to the time Mr. Hawes took possession of it?

(Objected to by pl'ffs' attorney.)

Answer. There never was to my knowledge. I passed and repassed there frequently; my means of observation were such that if there had been improvements there I must have noticed it.

T. BIDDISON.

Subscribed and sworn to before me, this July 28, 1857.

E. T. WELLS, Comm'r.

Amos Stillman, a witness, produced, cautioned, and sworn as aforesaid, testified as follows:—

Int. 1st. What is your occupation and place of residence, and how long have you resided there?

Answer. I am a surveyor; I reside at Rock Island, in Rock Island County, have resided at that place since 1850; have been part of this time County Surveyor for Rock Island County.

Int'y 2d. Have you ever surveyed the southwest part of the north-east quarter of fractional section (36) thirty-six, in township (18) eighteen north, of range two (2) west of the fourth P. M.? and if so, state what you know about the lines of said tract.

Answer. I have surveyed the southeast and west sides of the section, and also the middle line of the sections, the north and south quarter line on the east side of the section; the corners as described in the field book can be identified, the stones are there. I allude to a copy of the field notes which I obtained from St. Louis; I always did suppose that it was a copy of both Sargent's and Bennett's field notes; my survey agreed with Sargent's.

Int'y 3d. Are you acquainted with the house known as the Lindsay house?

Answer. I am.

Int'y 4th. Is that house upon the southwest part of the northeast quarter of fractional thirty-six, the land in dispute?

Answer. It is not, it is on the southeast quarter of the section; It is forty-five links from the north line of the quarter to the centre of the house.

Cross-examined by Judge Grant.

Cross-int'y 1st. Where did you get the field notes by which you made the survey spoken of?

Answer. I got some from one place, and some from another; they all came from St. Louis, I did not bring them. I got that township I think from Mr. Gilbert.

Cross-int'y 2d. Where are the field notes from which you made the survey?

Answer. They are down at the house.

Cross-int'y 3d. Please produce them.

Ans'r. I can produce them if necessary; I don't pretend that they are either originals nor certified copies from any proper office where they are kept; I know that I found the corners from the field notes; I think that the field notes are correct, but I know they are not certified copies.

Pl'ffs' atty. moved to reject this deposition.

AMOS STILLMAN.

Subscribed and sworn to before me, this July 28th, 1857.

E. T. WELLS, Comm'r.

Edward D. Gilbert, a witness, produced, cautioned, and sworn as aforesaid, testified as follows, to wit:—

Int'y 1st. What is your occupation, and your place of residence, and how long have you resided at said place?

Answer. I have been a surveyor; at present am a clerk in a lumbar yard. I reside in the city of Rock Island; have resided here since March, 1839. I never have been either county surveyor or deputy county surveyor, though I have been called upon at different times to do work in that line.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of fractional section thirty-six, in township eighteen north, of range No. two west of the fourth P. M.?

Ans'r. I am.

Int'y 3d. Have you ever surveyed said tract? If so, state what you know about the lines.

Answer. I have surveyed it. It was in May, 1855. I made the plat out on the 15th; presume that was the day I surveyed it. I found the stone at the southeast corner of the northeast fractional quarter of that section. I found it to be correct by all the witness trees. I found the southwest corner of the northeast quarter by running lines from known corners. I run a line between these two last mentioned corners.

Int'y 4th. Were you acquainted with the house known as the Lindsay house?

Ans. I was.

Int'y 5th. Where was it situated.

Answer. It was situated from the eighth section corner, south 81° 54′ east three chains and fifty-three links; this eighth section corner is the eighth section of northeast fractional quarter of section thirty-six.

Int'y 6th. On what tract of land was this house situated?

Answer. It was on the east half of the southeast fractional quarter of section thirty-six, by my survey. I don't recollect anything about the stable.

Cross-ex.

X-int'y 1st. By what field notes did you make this survey of which you have spoken?

Answer. I made them by a copy of the field notes which James Grant gave me an order for, upon C. H. Stoddard, Surveyor at Rock Island.

X-int'y 2d. Whose field notes did they purport to be?

Ans'r. George B. Sargent's.

X-int'y 3d. You don't know whether the copy which you had was an original or a copy?

Answer. I do not.

X-int'y 4th. You don't know then that they were Sargent's field notes?

Answer. No. I didn't see him make them. I didn't copy them from the Surveyor General's office.

X-int'y 5th. And you have no knowledge that they were copied from that office, or from the land office?

Answer. No, sir; no more than I got them in that way.

X-int'y 6th. You didn't meander the river across this section when you made this survey?

Answer. I ain't positive about that; I don't recollect that now.

X-int'y 7th. At what variation of your compass did you make this survey?

Answer. At 7° 46′, as Mr. Sargent did; I fell north of the cor-

ner 1 chain 79 links, with the random line. The true variation is 6° 5′, by my compass.

X-int'y 8th. What sort of a compass is yours?

Answer. I think it is William Young's make of Philadelphia; it is a common surveyor's compass, has no onius on it. It is not a solar compass; probably a five inch needle, might be six.

X int'y 9th. Do you remember what distance the house is from the line due south?

Answer. The northeast corner of the house was nearest to the line. I don't remember particularly now what my notes say, but I would swear to what I put down then.

N. B. Plffs' counsel gives notice that he will move to suppress the whole of the testimony of this witness, for the reason that it doesn't appear that his survey was made from the original field notes.

E. D. GILBERT.

Subscribed and sworn to before me this July 28th, 1857.

E. T. WELLS, Commissioner.

John A. Boyer, a witness, produced and sworn, testified as follows, to wit:—

Int'y 1st. What is your occupation and place of residence? and how long have you resided at said place?

Answer. I am a farmer. I live in Rock Island County, and have lived in and near the city of Rock Island since 1837.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of fractional section thirty-six, of township eighteen north, of range two west of the fourth P. M.?

Answer. I presume I am. I don't understand the surveyor's terms, but I know the piece of land you have reference to. I thought of entering it once, when I first came here. I understood it was vacant. That was in the fall of 1837.

Int'y 3d. State whether there was any cultivation on any part of this between the fall of 1837 and the time that David Hawes took possession.

(Plffs' attorney objects to this question.)

Answer. There was no improvements, none whatever. I carried a chain all around it once, in 1838 or 1839, somewhere there, with Baxter, when he was surveying.

Int'y 4th. Were you frequently upon this land during the time referred to, so that you could have seen any improvements that there might have been there?

Ans'r. I was there; wasn't many days that I didn't see it.

JOHN A. BOYER.

Subscribed and sworn to before me this July 28, 1857.

E. T. WELLS, Commissioner.

William Bell, a witness, produced, cautioned, and sworn, testified as follows, to wit:—

Int'y 1st. What is your age, occupation, and place of residence? and how long have you resided there?

Answer. My age is fifty. I reside in Rock Island, Rock Island County; have lived at that place since May of 1835; am a carpenter by occupation.

Int'y 2d. Are you acquainted with the southwest part of fractional section (36) thirty-six, in township (18) eighteen north, of range two west of fourth P. M., the tract of land in dispute, between the heirs of Thos. Lindsay, and David Hawes and others?

Answer. I am acquainted with that land, and have been since 1835.

Int'y 3d. How near to it did you reside?

Answer. With the exception of one year from the fall of 1844 to the fall of 1845, I have resided in the neighborhood of it.

Int'y 4th. Was there any cultivation on any part of said land between the years of 1836 and 1840?

(Objected to by plffs' counsel.)

Answer. This is a question that I am not prepared to answer, not positively. I wouldn't swear positively that there was or was not; but I can't recollect of any improvement there during that time.

Int'y 5th. Were you acquainted with the house occupied by Thos. Lindsay, near this land, in the occupation of which he made his claim?

Answer. I was; I helped build it.

Int'y 6th. Has that house always stood upon the spot where it was built?

Answer. I think so. I have no doubt of it.

WILLIAM BELL.

Subscribed and sworn to before me this July 28th, 1857.

E. T. WELLS, Commissioner.

William Frizzell, a witness, produced, cautioned, and sworn, as aforesaid, testified as follows:—

Int'y 1st. What is your age, occupation, and place of residence? how long have you resided at said place?

Answer. My age is forty-eight years. I reside in the city of Rock Island, and have resided at that place since 1836; am engaged in the grocery business; and am at present collector of said city.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of frac. section thirty-six, in township eighteen north, range two west of the fourth P. M., in Rock Island County?

Answer. Yes, I suppose I am.

Int'y 3d. State whether there was any cultivation on any part of this land between the fall of 1836 and the time David Hawes took possession of it.

(Pl'ffs' att'y objects to this int'y.)

Answer. I think not.

Int'y 4th. How frequently did you see the land, and what were

your means of knowing whether there was or was not any improvements upon it?

(Pl'ffs' att'y objects to this int'y.)

Answer. I saw it frequently, constantly you may say, more or less, every few days; had business up and down the road often. I have lived within half or three-quarters of a mile of it during all of residence here. I don't think there was any improvements there until Mr. Hawes made the first improvements.

Int'y 5th. With the ample manner you had of knowing the land, could there have been any improvements and you not have known it?

(Objected to by pl'ffs' attorney.)

Answer. I think not.

Cross-examined by Judge Grant.

X-int'y 1st. Have you any personal knowledge as to the boundaries of this land?

Answer. I have not any knowledge from having seen it surveyed; I know the land in dispute from report, what I supposed to be the land, lying north of the road; never saw a chain put over it. I think I know the land that Lindsay and Hawes were disputing about, and it is that of which I testify. WM. FRIZZELL.

Subscribed and sworn to before me this July 30th, 1857.

E. T. WELLS, Comm'r.

Jacob Sailor, a witness, produced, cautioned, and sworn as aforesaid, testified as follows, to wit:—

Int'y 1st. What is you age, occupation, and place of residence; and how long have you resided there?

Answer. My age is forty-three. I am a saddler by occupation. I live in the city of Rock Island, and have lived there since the fall of 1838.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of frac. section (36) thirty-six, township (18) eighteen north, range two (2) west of the fourth P. M., in Rock Island County, the land in dispute between the heirs of Thos. Lindsay and David Hawes, and others?

Answer. I don't know as I am acquainted with the land by the description in numbers; I know the tract of land which has been in dispute a number of years, between the heirs of Lindsay and Hawes, and others.

Int'y 3d. State whether there was any cultivation on any part of this land from the time you came here, until Hawes took possession of it.

(Objected to by pl'ffs' attorney.)

Answer. There was no cultivation on that tract of land, east of what we used to call the Davenport line; there was a fence there; that fence was somewhere near where the road now runs, south from Copp's Spring House, so called.

Int'y 4th. What was the appearance of the tract of land in dispute, and was it such that you could have told if there had been cultivation upon it within the year or two preceding 1838 (the time of your coming here)?

(Objected to by pl'ffs' att'y.)

Answer. The land was then lying in an open common, and grown up with shrubs and underbrush of various kinds; had no appearance of having been cultivated within that time. The only marks of cultivation which I could discover about it, was these ancient Indian corn hills, as they are called, large and covered with thick sod, and shrubs had grown up upon them in many places.

Cross-examined by Judge Grant.

X-int'y 1st. Have you any personal knowledge of this land?

Answer. I haven't from any survey. I never saw it surveyed. I have a personal knowledge of the land of which I have testified, the tract usually known as the Lindsay and Hawes tract, the tract they are disputing about.

X-int'y 2d. Do you know when this dispute commenced?

Answer. I do not; they have been disputing about it for several years.

X-int'y 3d. What was there to attract your attention to this land before this dispute commenced?

Answer. There was nothing particularly; it was an open common with some bushes growing upon it; nothing more than this, that it was a place of common resort, being near the spring-house; we used frequently to walk up there, and one couldn't help noticing the situation of the land.

X-int'y 4th. Did you know Thos. Lindsay in his lifetime?

Ans'r. I never knew but one of the Lindsays. I think his name was James; he afterwards lived on the other side of the river. I didn't know the old man.

X-int'y 5th. Have you any recollection of the year or time when you first noticed this land, particularly by its boundaries?

Answer. I don't know that land by its boundaries any more than by that boundary which was known as the Davenport line, and which I have before described; all east of this was a common so far as this tract extends. I have a more distinct recollection of the appearances and occurrency of the first two or three years after I came here, than I have of what has occurred the past three or four years. The first recollection I have of this land was the first fall after I came here. I noticed then it was all a common with bushes growing upon it, as I have above described. JACOB SAILOR.

Subscribed and sworn to before me, this July 30th, 1857.
E. T. WELLS, Comm'r.

Hibbard Moore, a witness, produced, cautioned and affirmed to tell the truth as aforesaid, testified as follows, to wit:—

Int'y 1st. What is your age, occupation, and place of residence; how long have you resided at said place?

Answer. My age is fifty one years. I live in Rock Island; have lived here since the spring of 1838. I came here about the last of May or first of June; can't say positively which. I have been a blacksmith here for twelve or fourteen years; since then haven't been in any business particular.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of fractional section (36) thirty-six, township eighteen north, range two west of the fourth P. M., the land in dispute between the heirs of Lindsay and David Hawes and others?

Ans'r. As for the description, I am not posted at all, but if it is the piece which used to be termed the "Lindsay piece," occupied by Hawes, Norris, and others, I know the piece.

Int'y 3d. State whether there was any cultivation on any part of this land from the time you came here until Hawes took possession of it?

(Objected to by plffs' attorney.)

Answer. I have no knowledge of any at all. I think there was not; if there ever was any, I never had any knowledge of it.

Int'y 4th. Was your knowledge of the premises such that you must have known it, if any had existed; or how ample were your means of knowing?

(Objected to by plffs' att'y.)

Answer. I think if I had a knowledge of any piece of ground in the country, I would have a pretty thorough knowledge of that; my knowledge certainly was such, I think, that I would have known if improvements had existed there.

Int'y 5th. Did you know Thomas Lindsay, deceased, the old man?

Answer. I have seen him, but was not intimately acquainted with him; he has been at my shop.

Int'y 6th. How far do you now reside from the land in dispute in this case, and how long have you resided where you now do?

Answer. The road only is between us, or our corners would come together, but for the road. I have resided at the same for four years last January.

Int'y 7th. Prior to you residing at your present residence, how far did you reside from the land in dispute since 1838?

Answer. I think about a mile—it's not a mile—it's in the neighborhood of three-quarters of a mile, I suppose. I lived in Rock Island and have ever since 1838.

Cross-examined.

X int'y 1st. You say that you have no personal knowledge of the boundaries of this land by numbers, now state when your attention

was first attracted to this land, as separated from other tracts in the neighborhood?

Answer. I can't say that my mind was attracted to that piece of ground separate and apart from any other, but when I first came to this country, and along for a good many years after, I was a working man, and it so happened that that was my Sunday ramble when I walked out; I generally took that course; it was one of the two only roads, if I recollect right, that lead from Rock Island, and I generally took that, because it lay along the river. That piece of ground when I came here, and for some years after, I can't say how many, was grown up to hazel brush principally, and where there was no hazel brush, it was cut up by paths—these little deep cut paths leading off from the main road made by stock, and the balance of the ground where there was no hazel brush nor paths, was covered with Indian corn hills, principally grown over with a thick turf, on the roadside right across from this piece of land. Where the ground has never been broke, these Indian corn-hills can be seen to this day.

Direct resumed.

Int'y 1st. Are you acquainted with one Lewis C. Underwood? If so, have you ever in company with him, or at any other time, seen potato tops growing upon an Indian corn hill, thickly covered with grass and turf, like the hills you have described upon the land in question? (Objected to by plffs' atty.)

Ans. I am. I have never been in company with him when I have discovered anything of that kind, and never discovered anything of that kind at any time.

Int'y 2d. Have you ever seen this land surveyed?

Ans. I have seen probably twenty surveys made of that land among other tracts, on both sides; it's a corner there, and they always make that a corner. I know its boundaries as well as if I had been interested in those surveys, though I am not a surveyor. (Objected to by plffs' atty.)

Int'y 3d. You have stated in answer to a cross-interrogatory, that you did not know this land by its numbers. Do you not know it perfectly as a locality, and does not that knowledge date back as far as the first month of your residence here in 1838? (Objected to by plffs' atty.)

Ans. I do know it very well as a locality, and my knowledge extends back to the commencement of my residence in Rock Island.

HIBBARD MOORE.

Subscribed and sworn to before me this July 30th, 1857.

E. T. WELLS, Comm'r.

Samuel Bowles, a witness, produced, cautioned and sworn as aforesaid, testified as follows:—

Int'y 1st. What is your age, occupation, and place of residence; how long have you resided at that place?

Ans. I am forty-five years old. I am a farmer. I live in Rock Island County, and have since 1835.

Int'y 2d. Do you know the southwest part of the northeast quarter of frac. section thirty-six, township eighteen north, range two west of the fourth P. M., the land in dispute between Lindsay and Hawes and others?

Ans. I do not know it by its numbers. I know it by its locality.

Int'y 3d. State whether there was any cultivation on this land, or any part of it, between the fall of 1836 and the time David Hawes took possession of it. (Objected to by plffs' atty.)

Ans. There was not to my knowledge.

Int'y 4th. What were your means of knowing if there had been?

Ans. I passed over it very frequently; it was on the travelled road from Rock Island to my residence; the road ran through it. If there had been improvements, I should say, I should have seen them.

Int'y 5th. What was the appearance of the land between the periods above mentioned, from 1836 till Hawes took possession of it?

Ans. It was principally growed over with hazel brush and small trees; a smaller portion of it was Indian corn hills and blue grass growed over.

Int'y 6th. Was your knowledge of and familiarity with the piece of land in dispute such, that if there had been a cultivated potato field upon it you must have known it; or, in other words, how thoroughly were you acquainted with the locality of which you speak? (Objected to by plffs' atty.)

Ans. If there had been a potato field upon it, I certainly couldn't have helped seeing it, except it had been so small that couldn't have seen it, nor any body else. I never saw anything of the kind. I have passed over it very frequently, and knowing that there was a dispute with the Lindsays, I became very well acquainted with that piece of ground, and with those around it.

Cross-examined by Judge Grant.

X-int'y 1st. When did Hawes first occupy this land?

Ans. I am not able to state the time; I knew where he was then, and knew that he was there. I don't believe that I can state the time precisely.

SAMUEL BOWLES.

Subscribed and sworn to before me, this July 30th, 1857.

E. T. WELLS, Comm'r.

Daniel Pagin, a witness, produced, cautioned, and sworn as aforesaid, testified as follows:—

Int'y 1st. What is your age, occupation, and place of residence, and how long have you resided at said place?

Answer. I am thirty-four years of age. I live in the city of Rock Island; have lived in that county since August, 1854. I am county

surveyor for Rock Island County, and have been since November, 1855.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of fractional section thirty-six, township eighteen north, range two west of the fourth p. m., and have you ever surveyed the same, and if so, when?

Answer. I do know that land. I surveyed it in December last. Mr. Stillman and I were together in that survey.

Int'y 3d. How long have you been a surveyor?

Answer. I have been in that business, that is, in civil engineering and surveying, since 1852.

Int'y 4th. Sate the result of your survey of the land above mentioned made in December last.

Answer. When we were called upon to survey that land, we were required to determine particularly the location of the east and west quarter section line of the northeast quarter of that section with reference to Lindsay's house. We began by finding the quarter section corner in the middle of the section established I think by Geo. B. Sargent, we found that corner from the witness trees as described by him. We found the bearing and distance to witness trees as given in his notes.

Int'y 5th. Do you know the old "Lindsay house," so called?

Answer. I do know the house which they call "the Lindsay house" apparently upwards of twenty years old, an old house with a stone chimney.

Int'y 6th. On what land is that house situated?

Answer. On the east half of the southeast quarter of section thirty-six, township eighteen north, two west of the fourth p. m., it is distant from the line forty-five links, the centre of the house on the north side.

Cross-ex'd by Judge Grant.

X-int'y 1st. With what field notes did you undertake to make this survey?

Answer. With Geo. B. Sargent's. I have a copy of the original notes which I procured from a preceding county surveyor.

X-int'y 2d. How do you know the field notes which you thus had was a copy of George B. Sargent's field notes?

Answer. Only as they were represented to me by Mr. Gilbert to be so.

X-int'y 3d. You made this survey with a copy which you obtained from Mr. Gilbert, then, and not one which you obtained from a prior county surveyor?

Ans. I did make it with a copy which I obtained from Mr. Gilbert, the description of the quarter section corner on the east side. I had also from a former county surveyor. I also had a description of it in a copy of the field notes by Mr. Sargent, purporting to be a true copy from the original field notes of his survey; the notes which I obtained from my predecessor also purport to be a copy

from the original field notes, but I don't know the fact, they all agree.

X-int'y 4th. How many lines did you survey?

Answer. Only the east and west line through the section as I have before mentioned.

X-int'y 5th. You didn't undertake to divide the section into four equal parts?

Answer. I did not.

X-int'y 6th. When you establish the centre of the section you always divide it as near as you can into four equal quarters, don't you?

Answer. I do.

X-int'y 7th. If one north and south line of a section be shorter than the other in dividing the section into four equal quarters, will the east and west line through the centre be straight?

Answer. It will not, if you divide it exactly. We invariably make the east and west lines through the section straight, and divide it as nearly equal as we can; we sometimes make an angle in the north and south lines through the section when it crosses the centre.

X-int'y 8th. Have you ever surveyed this land according to Bennett's survey?

Ans'r. I run the south line of that section. I have not surveyed the whole of it according to Bennett's, although I have a part of it. I found the variation of the lines running north and south to differ from the variation of those running east and west.

X-int'y 9th. Have you ever meandered the river by any survey?

Answer. I have not.

Direct resumed.

Int'y 1st. You say your field notes received from a preceding county surveyor of this county, purport to be a true copy of the field notes in the Surveyor General's Office at St. Louis, but that you did not personally copy them. Have you surveyed under them during the two years you have been in the office which you now hold? And if so, have they been a true guide to the original corners and witness trees which you have sought in your surveys?

Answer. I have surveyed under them during the two years I have held my present office; and, as a general thing, they have been a true guide, there are some slight mistakes. I don't remember of a case in which the distance didn't correspond with the bearing trees; the variation don't always, the bearing and distance don't always agree; I never have had any reason to question the genuineness of the copy.

(Plaintiffs object to the whole of this deposition.)

DANIEL PAGIN.

Subscribed and sworn to before me, this July 30th, 1857.

E. T. WELLS, Comm'r.

Joseph Johnston, a witness produced, cautioned, and sworn, as aforesaid, testified as follows:—

Int'y 1st. What is your age, occupation, and place of residence, and how long have you resided there?

Answer. I am about fifty years old; I live at Rock Island, have lived at that place since the fall of 1839; am a chairmaker by occupation.

Int'y 2d. Are you acquainted with the southwest part of the northeast quarter of fractional section thirty-six, township eighteen north, range two west of the fourth P. M., the tract of land in dispute between Lindsay and Hawes and others?

Answer. I am not acquainted with it by numbers; I know the land very well; I know the whole country from here up to Moline. I am not acquainted with any particular lands by the boundaries or numbers. I lived on it once, in the spring and winter of 1840. I boarded there in what is called the old Lindsay house with old man Clanson and his wife.

Int'y 3d. State whether there was any cultivation on any part of this land from the time you came here until Hawes took possession of it.

(Objected to by plffs' attorney.)

Answer. I know no cultivation on any lands from Lewis Underwood's place on the east, down to Copp's spring on the west; it was all bushes and hazel brush, and very rough. I don't know of any ground being cleared there until David Hawes and Jacob Norris took possession, and I kept a pretty sharp eye on it; for I once spoke to old man Clanson to pre-empt it. I won't say positively whether that was in 1840 or 1841, but it was one of the two years that I spoke to Clanson.

JOS. JOHNSTON.

Subscribed and sworn to before me, this July 30th, 1857.

E. T. WELLS, Comm'r.

United States of America, Northern District of Illinois.

I, E. T. Wells, a Commissioner, duly appointed by the Circuit Court of the United States for the northern district of Illinois, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed Mar h 1st, 1817; and the act entitled "An act to establish the Judicial Courts of the United States," passed Sept. 24th, 1789, do hereby certify, that the reason for taking the foregoing depositions is, and the fact is, that the witnesses above named are material and necessary in the cause in the caption of the said depositions named, and that they do not reside within one hundred miles of the place of

holding said court in which the said cause is pending. I further certify, that before taking the said deposition, a stipulation was entered into between the said parties, by which it was agreed to waive notice and proceed to take the depositions of such witnesses as might be produced in behalf of either the plaintiffs or defendants in said cause, before me, at my office in Rock Island; which said agreement signed by James Grant on behalf of the plaintiffs, and by Jos. Knox et al., for the defendants, is prefixed to the said deposition.

I further certify that on the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and during all the time of taking said deposition, I was attended by James Grant, attorney for said plaintiffs, and by Joseph Knox, Esq., attorney for the defendants, and by the said witnesses who are of sound mind and lawful age, and the said witnesses having been by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and the deposition by me reduced to writing in the presence of the said witnesses and from their statements, and after carefully reading the same to the said witnesses they subscribed the same in my presence. I shall return their depositions by mail to the court for which the same is taken; and I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal, this thirteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven. E. T. WELLS, [SEAL.]

U. S. Commissioner duly appointed by the Circuit Court of the United States for the Northern District of Illinois.

Endorsed: Opened March 1st, 1858, on request of Judge Scates, defts' att'y. WM. H. BRADLEY, Clk.

Collector's Office, Rock Island, Illinois, February 10, 1852.

Received of David Hawes sixteen $\frac{13}{100}$ dollars, taxes due the State of Illinois and county of Rock Island, for the year 1851, on the following lands:—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State.	County.	Road.	School.
S. W., N. E.	36	18	2 W.	$7\frac{23}{100}$	420	2 54	1 68	42	1 05
And $\frac{1}{3}$ S. E.	36	"	2 "	$18\frac{1}{3}$	183	1 09	72	18	46
S. $\frac{1}{2}$ S. E.	12	17	2 "	80	480	2 89	1 68	42	
Pr. property					226	1 33	88	22	57
						7 85	4 96	1 24	2 08
							$16 13		

T. B. GORTON, Sheriff and Collector.

Collector's Office, Rock Island, Illinois, February 12th, 1853.

Received of David Hawes thirty-seven dollars and 65 cents, taxes due the State of Illinois and county of Rock Island, for the year 1852, on the following lands:—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State.	County.	Road.	School.
E. pt. S. W., N. E.	36	18	2 W.	8 & house	1300	7 85	7 15	1 30	2 60
And 18¾ A. N. J. B. S. E.	36	18	2 W.	18¾	938	5 61	5 11	93	1 87
Personal property					360	2 17	1 98	36	72
						15 63	14 24	2 59	5 19
					Total,		$37 65		

ALEX. F. SWANDER, Sheriff and Collector.

Collector's Office, Rock Island, Illinois, February 15, 1854.

Received of David Hawes thirty-two $\frac{85}{100}$ dollars, being the amount of taxes, interest, and cost due the State of Illinois and county of Rock Island, on the following tract of land, for the year 1853:—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State, county.	Road.	School.
E. pt. S. W., N. E. of sec.	36	18	2 W.	8 & house	1600	16 70	3 20	3 20
Personal property					675	7 05	1 35	1 35
						23 75	4 55	4 55
					Total,	$32 85		

Collector's Office, Rock Island, Ill., August 8, 1854.

Received of David Barnes three and $\frac{93}{100}$ dollars, taxes due the city of Rock Island, for the year 1854, on the following town lots:—

Description. Lots. Block. Addition.	Valuation.	City and special tax.
E. part of S. R. R. tract, and all N. R. R. track, Personal property	600	$3 00
N. E. town h., 36, 18 N., 2 W., 2 acres,	185	93
		3 93

JOS. JOHNSTON, Marshall and Collector.

Collector's Office, Rock Island, Ill., August 8, 1854.

Received of Barnes & Babcock seventeen and $\frac{50}{100}$ dollars, taxes due the city of Rock Island, for the year 1854, on the following town lots :—

Description.	Lots.	Block.	Addition.	Valuation.	City and special tax.
N. pt. W. of iron and N. of railroad track, E. pt. of frat. S. W. of N. E. sect. 36, township 18 N., 2 W., 5 acres, val. $500 p'r a.,				2500	$12 50
Personal property,				1000	5 00
					$17 50

JOS. JOHNSTON, Marshall and Collector.

Collector's Office, Rock Island, Ill., May 2d, A. D. 1855.

Received of Barns & Randall twelve dollars, being the amount of tax, interest, and cost due the State of Illinois and county of Rock Island, on the following tract of land, for the year 1854 :—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State & county.	Road.	School.
Pt. E. pt. S. W., N. E. fr'l	36	18	2 W.	6½	1200	9 60	2 40	
					Total,	$12 00		

T. B. GORTON, Sheriff and Collector.

Collector's Office, Rock Island, Ill., January 25, 1856.

Received of Barns & Randall one hundred one $\frac{56}{100}$ dollars, being the amount of tax, interest, and cost due the State of Illinois and county of Rock Island, on the following tract of land for the year 1855 :—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State & county.	Road.	School.
Out lot E. pt. 30		18	2 W.		4000	42 80	4 00	
Personal property					4680	50 08	4 68	
						$92 88	8 68	
						$101 56		

T. B. GORTON, Sheriff and Collector.

Collector's Office, Rock Island, Illinois,
January 25th, A. D. 1856.

Received of David Barnes seventy-seven $\frac{85}{100}$ dollars, being the amount of tax, interest, and cost due the State of Illinois and county of Rock Island, on the following tract of land, for the year 1855 :—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State & county.	Road.	School.
E. pt. lot 7 Le Clare's Reserve				80	2000	21 40	2 00	26 00
N. J. B., N. pt. E. ½ N. E.	35	18	1 W.	40⁸⁰	325	3 48	33	4 22
E. pt. out lot 29		18	2 "		200	2 14	20	
W. " 30		18	2 "		1200	12 84	1 20	
Personal property					345	3 69	35	
						$43 55	4 08	30 22
						$77 85		

T. B. GORTON, Sheriff and Collector.

Collector's Office, Rock Island, Ill., March 2d, 1857.

Received of David Barnes one hundred and sixty-nine $\frac{13}{100}$ dollars, being the amount of tax, interest, and cost due the State of Illinois and county of Rock Island, on the following tract of land, for the year 1856:—

Description.	Section.	Town.	Range.	Acres.	Valuation.	State & county.	Road.	School.	Jail.
E. pt. lot 7 Le Clare's Reserve		18	1 W.	80	2000	21 40	2 00	22 00	2 00
N. J. B., N. ½ E. ½ N. E.	35	"	"	23⁸⁰	240	2 57	24	2 64	24
" pt. " "	"	"	"	10	65	70	7	72	7
E. pt. out lot 29 Rock Island					200	2 14	20	1 70	20
" 30 "					5200	55 64	5 20	44 20	5 20
Personal property						82 45	7 71	71 26	7 71
						$169 13			

E. M. BEARDSLEY, Sheriff and Collector.

Collector's Office, Rock Island, Ill., January 21, 1858.

Received of David Barnes one hundred ninety-eight $\frac{95}{100}$ dollars, taxes due the city of Rock Island, for the year 1857, on the following town lots:—

Description. Lots. Block.	Addition.	Valuation.	City and special tax.
N. W. part out lots Nos. 30		1000	$11 50
E. " "		6000	69 00
Out lot No.		2500	28 75
Personal property		7800	89 70
			$198 95

WM. FRIZZELL, Collector.

Town Collector's Office,
Rock Island Township, Rock Island, Ill., Feb. 6th, 1858.

Received of David Barnes three hundred and sixty-two $\frac{10}{100}$ dollars, taxes due the State of Illinois and county of Rock Island, for the year 1857, on the following town lots, to wit:—

Description.	Lot.	Block.	Value.	State and county tax.	District tax for schools.	Town tax.	Railroad tax.	Jail tax.	Total.
Out lot W. pt.	30		1000	8 70	10 00	05	1 50	50	
" E. pt.	"		6000	52 20	60 00	30	9 00	3 00	
"	85	1[85] acres	2500	21 75	25 00	13	3 75	1 25	
Personal property			7900	69 73	79 00	39	11 85	3 95	
				152 38	174 00	87	26 10	8 75	362 10

WM. SHEARER, Collector.
P'r SHAW.

I hereby certify that David Hawes, of Rock Island County, Illinois, paid me the State and county tax of A. D. 1851, on S. W. N. E. 36, 18, 2 W., and that I collected the tax of 1850; and the above described tract was not assessed for that year.

T. B. GORTON,
Coll'r of Tax of A. D. 1850 and 1851.

July 30th, A. D. 1857.

I, Jos. Conet, clerk of the County Court of Rock Island Co., certify that the above statement is correct, as appears by the records of my office.

In witness whereof I sign my name and affix the seal of said office, this 30th day July, A. D. 1857.

[SEAL.] JOS. CONET, Co. Clerk.
By J. M. BEARDSLEY, Dep'ty.

And afterwards, to wit, on Wednesday, the twenty-fourth day of March, in the year A. D. 1858, in the March adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL et al., vs. DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK et al. } In Chancery.

Now come the parties, by their respective counsel, and by agreement this cause is set down for hearing upon the bill, the answer thereto, and the proofs on file; and after hearing the arguments of counsel until the hour of adjournment, without concluding the same,

the further arguments of counsel are postponed until to-morrow morning.

And afterwards, to wit, on Thursday the twenty-fifth day of March, in the year last aforesaid, in the March adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL et al., vs. DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK et al. } In Chancery.

Now come again the parties, by their respective attorneys, and after proceeding with the arguments of counsel until the hour of adjournment, without concluding the same, the further arguments of counsel are postponed until to-morrow morning.

And afterwards, to wit, on Friday, the twenty-sixth day of March, in the year last aforesaid, in the March adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL et al., vs. DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK et al. } In Chancery.

Now come again the parties, by their respective counsel, and after hearing the concluding arguments of counsel, the court not being sufficiently advised in the premises, take time to consider.

And afterwards, to wit, on Thursday, the first day of December, in the year A. D. 1859, in the October adjourned term of said court, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:—

AUGUSTINE A. LINDSEY, ADAM NOEL, SUSAN NOEL, JAMES LINDSEY, HORACE BRADLEY, ELEANOR M. BRADLEY, JOHN B. MATTHEWS, MARGARET D. MATTHEWS, and JOSEPH T. LINDSEY, vs. DAVID HAWES, JACOB NORRIS, GEORGE M. BABCOCK, and DAVID BARNES. } In Chancery.

Now come the parties, by their solicitors, and the court being now fully advised in the premises, and having fully considered the bill, answers, proofs, and arguments of counsel in this cause made, does order, adjudge, and decree that the bill be dismissed, at the complainants' cost. It is thereupon considered by the court that the

defendants do have and recover of and from the complainants the costs and charges by them about this suit expended; and thereupon the complainants pray an appeal to the Supreme Court on this behalf, which is allowed to them on their filing within twenty days a bond, to be approved by the court, in the sum of two hundred dollars.

And afterwards, to wit, on the twentieth day of December, in the year A. D. 1859, came the said complainants by their said attorneys, and filed in said court their bond, which is approved by the court with the consent of the solicitors for the defendants; said defendants by their solicitors waiving the issue and service of a citation, and consent to enter their appearance without further notice, which said bond is in the words and figures following, to wit:—

Circuit of the United States, Northern District of Illinois.

AUGUSTINE A. LINDSAY and Others
vs.
DANIEL HAWES and Others.

Know all men by these presents that we, Thomas J. Robinson and John W. Spencer, are held and firmly bound unto David Hawes and all the other defendants in a petition in equity, wherein A. A. Lindsey and others are plaintiffs, in the Circuit Court of the United States for the Northern District of Illinois, which court is held at Chicago, Illinois, in the penal sum of two hundred dollars, to which payment we bind ourselves and each of us.

Given under our hands and seals this the 20th day of December, A. D. 1859.

The condition of this obligation is this, that whereas Augustine A. Lindsey and others, plaintiffs in a petition in equity in said court, wherein David Hawes and others are defendants, have prayed an appeal to the Supreme Court of the United States:

Now if said Augustine A. Lindsey and others, plaintiffs, shall duly prosecute said appeal, and pay all costs and damages caused by the publication thereof which may be adjudged against them, and abide the orders of said court, then this obligation to be void; otherwise in full force and effect. T. J. ROBINSON, [SEAL.]
JOHN W. SPENCER. [SEAL.]

Let the above bond be approved. W. B. SCATES,
Solicitor for Defendants.

Approved. THOMAS DRUMMOND.

Endorsed. Filed December 20th, 1859.
WM. H. BRADLEY, Clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the

foregoing transcript to be a true and complete copy of all the proceedings had in said court on the chancery side thereof, in said cause wherein Augustine A. Lindsey and others are complainants and David Hawes and others are defendants, as the same appear on file and of record in said court and now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this first day of June, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth year.

[SEAL.] WM. H. BRADLEY, Cl'k.